



**Cynulliad Cenedlaethol Cymru
The National Assembly for Wales**

**Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
The Constitutional and Legislative Affairs Committee**

**Dydd Llun, 24 Tachwedd 2014
Monday, 24 November 2014**

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Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynndi yn y pwyllgor. Yn ogystal, cynhwysir
trawsgripiad o'r cyfieithu ar y pryd.

The proceedings are reported in the language in which they were spoken in the committee. In
addition, a transcription of the simultaneous interpretation is included.

**Aelodau'r pwyllgor yn bresennol
Committee members in attendance**

Alun Davies	Llafur Labour
Suzy Davies	Ceidwadwyr Cymreig Welsh Conservatives
David Melding	Y Dirprwy Lywydd a Chadeirydd y Pwyllgor The Deputy Presiding Officer and Committee Chair
William Powell	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Simon Thomas	Plaid Cymru The Party of Wales

**Eraill yn bresennol
Others in attendance**

Mick Antoniŵ	Aelod Cynulliad, Llafur Assembly Member, Labour
Peter Black	Aelod Cynulliad, Democratiaid Rhyddfrydol Cymru Assembly Member, Welsh Liberal Democrats
Y Fonesig/Dame Rosemary Butler	Aelod Cynulliad, Llafur (y Llywydd a Chadeirydd Comisiwn y Cynulliad) Assembly Member, Labour, (the Presiding Officer and Assembly Commission Chair)
Bethan Jenkins	Aelod Cynulliad, Plaid Cymru Assembly Member, The Party of Wales
Elisabeth Jones	Cyfarwyddwr y Gwasanaethau Cyfreithiol, Comisiwn y Cynulliad Director of Legal Services, Assembly Commission
Chris Warner	Pennaeth Pwyllgorau Polisi a Deddfwriaeth, Comisiwn y Cynulliad Head of Policy and Legislation Committee Service, Assembly Commission

**Swyddogion Cynulliad Cenedlaethol Cymru yn bresennol
National Assembly for Wales officials in attendance**

Stephen Boyce	Y Gwasanaeth Ymchwil Research Service
Gwyn Griffiths	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser
Ruth Hatton	Dirprwy Glerc Deputy Clerk
Dr Alys Thomas	Y Gwasanaeth Ymchwil Research Service
Gareth Williams	Clerc Clerk

*Dechreuodd y cyfarfod am 14:00.
The meeting began at 14:00.*

Cyflwyniad, Ymddiheuriadau, Dirprwyon a Datganiadau o Fuddiant Introduction, Apologies, Substitutions and Declarations of Interest

[1] **David Melding:** Good afternoon, everyone, and welcome to this meeting of the Constitutional and Legislative Affairs Committee. I will start with the usual housekeeping announcements. We do not expect a routine fire drill, so if we hear the alarm, please follow the instructions of the ushers, who will help us to leave the building safely. Please put all mobile devices into silent mode or switch them off. These proceedings will be conducted in Welsh and English. When Welsh is spoken, there is a translation on channel 1. Should you be hard of hearing, there is amplification on channel 0. I apologise to Members that we have reordered the agenda slightly. It is just to make the running of the meeting a little easier. We will move now to item 2.

Offerynnau nad ydynt yn Cynnwys Materion i Gyflwyno Adroddiad Arnynt o dan Reol Sefydlog 21.2 na 21.3 Instruments that Raise no Reporting Issues under Standing Order 21.2 or 21.3

[2] **David Melding:** I was going to say that ‘they are’ listed, but, in this case, ‘it is’ listed for you. Are we content with that? We are.

14:01

Papurau i’w Nodi Papers to Note

[3] **David Melding:** The first one is a letter from the Minister for Public Services. It relates to the council tax reductions schemes. It is kind of old territory, I am afraid, but do any Members wish to make comments on it? No. In that case, can I suggest that I write on your behalf to indicate that we will be as co-operative as possible but that, to really be helpful, if we can see draft regs in good time, we can offer more flexibility? We seem to be in this situation again, for reasons that are, frankly, mystifying, of not having anything sent to us in draft. It knows how important these things are and how tight the timetable is. It is not the first time that the autumn statement has been made in the winter. Really, I think that it needs to anticipate much more effectively than it is doing at the minute. So, I think that we will indicate that we will co-operate, but I think that we need to send a slightly stern message as well that it is not doing its own cause very much good by the way it has handled it so far.

[4] **Alun David:** Can I just say, in agreeing with you, David, that the penultimate paragraph of Leighton’s letter refers to copying draft regulations to the committee at the earliest possible opportunity? So, I think that we need to take that into consideration when writing that note.

[5] **Suzy Davies:** Could I raise something else as well? Again, reference has been made to the Government here having to wait for changes to be made at the Department for Work and Pensions end in the UK. Bearing in mind that this is the third year running now, perhaps you could ask what it has done in the meantime to see whether it can get a speedier draft idea of what the DWP is up to.

[6] **David Melding:** Yes. Okay. This is an awkward one to handle, but I am not reassured that it has itself really done the maximum to facilitate a smooth scrutiny process. We have got to ensure scrutiny. We have obviously got to ensure that it can be done in a manner that does not inconvenience the public in terms of the council tax schemes, and the unitary authorities need to put these schemes in place by a certain date, but, you know, we know all these fixed things and, therefore, it really does have to be managed a bit better. That

said, we will be as flexible as possible, as that is clearly in the public interest as well.

[7] **Alun Davies:** I do not disagree with the points you are making, but we are, of course, part of a machine over which we, here, and the Welsh Government have little control. While we do know timetables in advance—and I think everybody understands and appreciates that—until you have the numbers in the boxes, it is very difficult to make very clear preparation for that. The alternative would be to use indicative figures, which would simply serve to mislead.

[8] **Suzy Davies:** Well, I think—

[9] **David Melding:** We have gone through all this before.

[10] **Suzy Davies:** Yes.

[11] **David Melding:** The real problem we have is with the bulk of the scrutiny that has got to be done on very long drafts. Actually, when it comes down to it, from our point of view, there are only a certain number of items that really could require some sort of ‘merit’ intervention on our part. At least we can clear the bulk of what this scrutiny by our officials requires. To spell it out, last time, we had to have a couple of our staff in over the Christmas period when they had not anticipated being in, doing some very detailed work. That could have been done in a much more manageable and regular way during the term if we had had as much of the draft as possible sent to us, or the draft marked in certain areas where they were not confident that that would be the final version. I am sure, Gwyn, that I am speaking about the practicalities about managing this—

[12] **Alun Davies:** I am sorry, can I just say that I think that you are right on that? I know that the Government has appreciated the work of this committee in scrutinising those regulations. It may well be that officials of this committee might seek to meet officials in Welsh Government to have that conversation and to see—

[13] **David Melding:** Oh, yes, I can assure you that we have sought every such avenue out, and the problems are—. I do not really want to spell this out in public. I am happy to talk to you further about it, but I am pretty confident that the problems that have been caused here, which could have been anticipated, do not start from this committee or the officials who serve us.

[14] **Alun Davies:** I would not suggest that for a moment.

[15] **David Melding:** Okay. The next paper is from the Counsel General. He made reference, I think, to what Earl Howe had said in that debate, and now we have that reference for our records. I am sure that we are happy to note that.

14:06

**Cynnig o dan Reol Sefydlog 17.42 i Benderfynu Gwahardd y Cyhoedd o'r
Cyfarfod**

**Motion under Standing Order 17.42 to Resolve to Exclude the Public from the
Meeting**

[16] **David Melding:** We will be taking evidence in relation to our inquiry at 2.30 p.m.. Can I suggest that we go into private session until then to deal with another item of business?

[17] I move that

the committee resolves to exclude the public from the meeting in accordance with Standing Order 17.42(vi).

[18] Does any Member object? I see no Member objecting, so we will now go into private session until 2.30 p.m.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 14:07.
The public part of the meeting ended at 14:07.*

*Ailymgynullodd y pwyllgor yn gyhoeddus am 14:29.
The committee reconvened in public at 14:29.*

Tystiolaeth mewn perthynas â'r Ymchwiliad Deddfu Evidence in relation to the Making Laws Inquiry

[19] **David Melding:** We now move to take further evidence in our inquiry into making laws in the fourth Assembly. I am particularly delighted to welcome the Presiding Officer, Dame Rosemary Butler, this afternoon. Presiding Officer, do you want to introduce your team, just for the Record?

[20] **The Presiding Officer (Rosemary Butler):** Yes, thank you very much. On my right, I have Elisabeth Jones, who is the chief legal adviser, and, on my left, I have Chris Warner. We spent about 10 minutes deciding what his title is—he is head of policy and legislation committees. I think that is what he does anyway; I am not very sure. However, he is obviously the right guy to come this afternoon.

[21] First of all, Chair, I would like to thank the committee for carrying out this very important inquiry. It is vital that we review our processes and procedures for making laws to ensure that they are the best that they possibly can be, especially as further constitutional change is on the way. I strongly believe that, in making laws for Wales, the Assembly has the responsibility to enable all citizens to engage with that process, and the public should be able to access and influence proposed legislation.

[22] I am proud of the way the Assembly engages with people in the legislative process, and we have a track record of developing innovative mechanisms to do this. Our committees are now carrying out more pre-legislative scrutiny, and this provides earlier and greater opportunity to influence the development of legislation. An example of this is the Children, Young People and Education Committee and its pre-legislative work on qualifications in the Higher Education (Wales) Bill. Committees are also undertaking post-legislative scrutiny to check that laws that we pass here really do make a difference to our citizens. The Health and Social Care Committee is actually looking at the Mental Health (Wales) Measure 2010 at the moment and will report back in the new year. This is really important. We may think that we are doing a good job, but until we actually look at it to prove that we are, then we are not really satisfied.

[23] The Assembly Commission has invested in support and professional development for Members to help them to make the most of legislative scrutiny. I believe that this is certainly paying off. We can see the benefits in the way Members are tabling more amendments and using them to test policy options with the Ministers. Now, scrutiny can be hampered, however, if major changes to a Bill are made after Stage 1 consideration of the general

principles, as the subsequent amending stages tend to offer less scope for a thorough examination of the issues and participation by stakeholders. Amendments that give effect to committee recommendations and other new ideas are, of course, welcomed, but we have seen examples where changes that could have been made before introduction were instead consuming time at the amending stages. I hope that we do not see much more of this in the future.

[24] I believe that scrutiny is constrained by the size of the Assembly, and this is true regardless of the way in which our committees are structured. We cannot get away from the fact that we have a small number of non-Government Members to scrutinise a full programme of Bills. An increased number of Members, as envisioned by the Silk commission, would provide greater opportunities to develop knowledge and expertise, making for better scrutiny and proposed amendments.

[25] Another challenge is the Assembly's conferred powers model of legislative competence. This model has created great uncertainty and caused problems for the development, scrutiny and amendment of legislation. The uncertainty has been significantly lessened by the Supreme Court's judgment with regard to the Agricultural Sector (Wales) Bill. This is helpful, but it does not provide the same clarity as a holistic approach to legislation could do. I have called for some time for the Assembly to move to a reserved powers model, and I welcome the Secretary of State's recent commitment to progress this.

[26] I will finish, Chair, with just two further points about accessibility. First, in drafting, if legislation is to be accessible, we should avoid unnecessary complexity and overtly technical language. Generally, Welsh Government legislation appears to be drafted with this intention. Nevertheless, there remains room for improvement, and I drew attention to some of those areas in my written evidence.

[27] Lastly, it is vital that the public and their legal representatives can find out what the law is in Wales and how it applies to them without extreme difficulty or huge expense. As we legislate, we add to an already complicated statute book, and we need to give serious consideration to a new approach, one that perhaps includes the consolidation of laws. Thank you.

[28] **David Melding:** Thank you, Presiding Officer. I think that was a helpful introduction and adds to the written evidence. I know I speak for all committee members in saying that we found that very useful indeed. Perhaps touching on the latter point first, you do say in the written evidence that perhaps there have been occasions when there has been over-reliance on UK legislation as a model. Is that something that you would be very keen to see the Assembly and the Government move away from? Where do you think the balance is at the minute, because it is actually quite challenging to create stand-alone Welsh law and to take all opportunities to do that? What sort of balance is there at the minute in terms of the Welsh Government's record so far in producing its legislation?

[29] **The Presiding Officer:** That is a very interesting point. I think that reliance on UK legislation as a model can be problematic if weaknesses are imported and we do not spot the weaknesses before they are imported. Also, it is about learning from those weaknesses as they come up. Definition of terms by reference to UK legislation is particularly problematic, I think, because changes to UK legislation can potentially change definitions. If that is the case, then we have some serious problems. It is much less accessible for a reader to understand because they have to constantly cross-reference between different UK legislation. So, I think that there is a lack of consistency sometimes between Welsh and English drafts of legislation, and this can waste a lot of time in committee, and in Plenary, just trying to make amendments. Perhaps Elisabeth might like to add something there.

[30] **David Melding:** I think what we would quite like to get some sense of is whether there is some evidence that the Welsh Government has missed one or two opportunities where it could really have drafted a Wales approach and not had us, the public or the interested people cross-referencing all sorts of UK pieces of legislation.

[31] **Ms Jones:** I think, in terms of definitions, the opportunity is always there, Chair. It does obviously make legislation longer for defined terms to be spelled out in a freestanding way in Wales legislation, as opposed to simply referring to a definition in existing UK legislation. However, I would argue that the price of that extra length is worth it for clarity the public—not just for the legal sector, but for members of the public themselves. So, that is an area of concern. That would be my main area of concern if I was asked to identify one, rather than more structural reliance on UK legislation.

[32] **The Presiding Officer:** Did that answer your point about whether there has been an example?

[33] **David Melding:** Yes, I think I can understand that people want to be tactful in not naming pieces of legislation if anything would have benefited from taking a more ambitious standalone route. However, I think, as a general statement, we will take that as evidence that it is important that we encourage this approach of trying to consolidate or have all the definitions there in one place rather than referring people to a myriad of other statutes. It must be a formidably difficult task for a professional lawyer to be able to do that, let alone an interested member of the public.

[34] I will just move on to one other point that you mentioned in your evidence, Presiding Officer, and that is the lack of consistency sometimes between Welsh and English drafts of legislation. That risks undermining the validity of the fact that we are actually making law bilingually. We are not translating one version into the other language; it is actually a vital bilingual law-making process.

[35] **The Presiding Officer:** Yes. The idea would be to have laws made in Welsh and English at the same time and not a translation, but that is not where we are at. However, I think that there is often a difference in language and this can, as I said earlier, waste a lot of time at committee trying to make sure that everybody does understand the law, because what we have to do is to make sure that it is clear and simple language. Chris, do you want to add anything there?

[36] **Mr Warner:** Yes. Two recent examples were the Social Services and Well-Being (Wales) Bill and the Housing (Wales) Bill, which were significant Bills anyway. We saw a large number of single-language amendments. So, for example, at Stage 3 of social services, we saw 60 single-language amendments, which then consumed time that could have been used to look at more substantive amendments. That is what the concern is there.

[37] **Simon Thomas:** If I may, just while we are on the bigger picture, as it were, have you been able at all to assess how our relationship in Wales to UK legislation, and other legislation, is reflected elsewhere in the United Kingdom, in particular with the experience in Scotland or Northern Ireland? I understand that there is a kind of association of presiding officers that meets, and potentially greets; how might that be developing? Are there examples that are very different in those constituent parts, or, indeed, are there examples in other Commonwealth countries, perhaps, with a similar kind of common law approach, where there is a different approach being taken? Have we been alert enough to some of those opportunities, as we have started to really legislate in this Assembly?

[38] **The Presiding Officer:** I think that I will have to ask a legal mind to answer that one.

[39] **Ms Jones:** I think that there are excellent examples from New South Wales, and also from Canada, both at federal level and at some state level, in terms of the clarity of the drafting, the approach to consolidation, and, in New Brunswick, in particular, as I am sure you will know, the absolutely world-class approach to co-drafting in French and English, rather than translation. So, we are aware of those examples. The Law Commission inquiry into the accessibility of law at the moment is going to refresh our information on all of those areas, which will be very welcome and will save a lot of public money in terms of officials travelling to those jurisdictions to do the work for us, I think.

[40] **David Melding:** I will ask Alun Davies to take us through the next set of questions.

[41] **Alun Davies:** Thank you very much. You describe the explanatory memoranda as ‘variable’, in your written evidence, Presiding Officer. ‘Variable’ is a word that could hide a multitude of sins. Perhaps you might wish to expand on what you meant by the use of that word.

[42] **The Presiding Officer:** Well, I am sure that you will agree that well-drafted and comprehensive explanatory memoranda are essential if we are going to be able to scrutinise legislation properly. But, it has been variable, and some of them have been criticised by members of the committee, obviously. However, there are good examples, and I think that one of them was the Higher Education (Wales) Bill, where the regulatory impact assessment was really well received and was commended by the Finance Committee. Sometimes, they are not made available in a timely fashion, which is always quite difficult, and the table of appeals provided during Stage 1 of the Social Services and Well-being (Wales) Bill, for example, could have usefully been included in the explanatory memorandum. So, information is coming, but it is not coming all at the same time. I think that it is just variable; I cannot be more substantive than that in my comment—I would not call it criticism. However, there are some very good examples, and there are others that are yet catching up, and we are pointing those out whenever they come, so that the Government is, hopefully, learning from those.

[43] Are there any more examples, Chris, that you can think of?

[44] **Mr Warner:** Just on the social services EM, I think that we mentioned in the written evidence that the committee queried the cost implications that were in that EM. I have to say that we did a quick survey of the committee reports on legislation, and it seems to me that the comments on explanatory memoranda are getting fewer, which suggests that they are improving in quality. It is not that scientific a judgment, but it is a move in the right direction, I think.

[45] **Simon Thomas:** Or committees have given up mentioning it. [*Laughter.*]

[46] **David Melding:** That is a bleak conclusion. [*Laughter.*]

[47] **The Presiding Officer:** I doubt very much that that is the case, Chairman; I doubt that that is the case.

[48] **Alun Davies:** I might err more towards Simon, actually, on this matter. My feeling is that this is somewhere where the Government has let itself down on a number of occasions, in terms of explanatory memoranda; I do not think that the Government has always provided very good EMs to sustain and support some of the legislation. However, you do have the ability—or we have the ability—to seek changes to the structures and the format of explanatory memoranda. Notwithstanding the comment made by Mr Warner, are there any changes that you believe could be made, under Standing Orders, to actually improve the quality, or to improve the consistency of the quality, of explanatory memoranda?

[49] **The Presiding Officer:** As far as Standing Orders go, I do not think that there is a need to change them at the moment, but I certainly think that we need to make sure that they are being—what is the word that I should say—complied with; I think that that would help. I would be disappointed if Members have stopped feeling the need to criticise—or have stopped feeling that the ability to criticise is getting them anywhere. I think that we might need to address that, if that is the case—it has passed me by, if that is the case. No, I do not think that we need to change Standing Orders, but I think that we need to look at this in light of the recommendations that the committee is making. I will take it on board and we will do that.

14:45

[50] **Suzy Davies:** Presiding Officer, I can see that you are enthusiastic about pre-legislative scrutiny and post-legislative scrutiny, and you refer in your evidence to occasions when the Stage 1 timetable has been extended. We also have a very packed timetable in terms of legislation. How comfortable are you with the explanation given by Ministers for the consideration they give to the time available for scrutiny when they decide what should appear on the face of a Bill and what should not, and, when it comes to secondary legislation, which of the procedures—negative or affirmative—should be applied to that?

[51] **The Presiding Officer:** It is absolutely essential that what is on the face of the Bill, and the name of the Bill, actually explain what is in the Bill. There is nothing worse than having a Bill that says something, which sounds very catchy, but does not actually mean anything to anybody. I am quite scrupulous about that. When it comes to me, before I can agree the name of a Bill, I take advice and I make sure that the Government, wherever possible, listens to what I say. So, that is really important.

[52] **Suzy Davies:** If it helps, what I am getting to is that we have had Ministers come here and say, ‘The reason we defer so much to secondary legislation, and subsequently to the negative procedure on that secondary legislation, is that the Assembly doesn’t have enough time or capacity to scrutinise at the level that perhaps we might like to’. Do you think that that is a fair observation?

[53] **The Presiding Officer:** I think that we all know that we are not over-endowed with Members, and so we do appreciate that it is difficult. I think that it is very important that a lot of work is done before the Bill is placed before the Assembly. There is nothing more time-wasting than having to make all of these amendments, which we have done with several Bills. The social services Bill was one and there was another one—I cannot remember which one it was—to which there were hundreds of amendments, and that just takes up so much time. So, there could have been a lot more preparatory work done by the Government before it brought it forward; I think that might help. I think that pre-legislative scrutiny helps quite a lot. I understand that the Government is taking a look at the availability of committee time and striking a balance between primary and secondary legislation. This is a matter for us to decide, so it should not be for the Government to decide what is primary and what is secondary. If a Bill comes forward, we will make time to make sure that it is scrutinised properly, and if the committees feel that they do not have time, then the Bill can be delayed.

[54] **Suzy Davies:** That is very encouraging.

[55] **The Presiding Officer:** It is in our hands; that is the point.

[56] **Suzy Davies:** I do not think that any of us would want to see something that should be in primary legislation deferred to secondary simply because the Government thinks, ‘Oh, you poor dears, you haven’t got time to look at this’.

[57] **The Presiding Officer:** I am glad that it is very sympathetic towards the role of Assembly Members, but it is important that we get legislation right the first time. We are unicameral, we do not have a second house and we cannot refer up to somebody who then sends it back and says, ‘Well, get this right’; we have to do it the first time. Therefore, pre-legislative scrutiny is absolutely vital. I think that whenever we can do it, we should do it. If a committee needs more time, then we will make sure that that committee gets more time.

[58] **Suzy Davies:** What about Stages 2 and 3, because, I think it was with the social services Bill that we had a Report Stage—I might have the wrong Bill there? Obviously, we have been in this situation more than once now where significant amendments have come in at Stage 1, and we seem to be rushing towards a conclusion for the second half of the procedure. Do you think that there is scope for introducing additional stages or extending the gap between Stages 2 and 3, with perhaps a new Report Stage and for that to occur more frequently?

[59] **The Presiding Officer:** I do not think that we need more stages, but we need more time for the existing stages. It is important that we are not wasting time on amendments that should not be there—things that should have been sorted out before the legislation came forward. I think that is the big issue.

[60] **Suzy Davies:** Well, if we have extended amendments—. What I am looking for really is: is there opportunity, perhaps, to bring things back to committee in between some of these stages?

[61] **The Presiding Officer:** I hope that that would not be necessary.

[62] **Suzy Davies:** This is where they get it wrong.

[63] **The Presiding Officer:** Yes, well, I hope that lessons have been learnt and that should not have to happen. I suppose, if you are desperate, and there are things that cannot be put right in Stages 2 and 3, then that might be a way forward, but I would hope that we would be able to cope with it in Stages 2 and 3. I accept that there would be a lot of increased pressure on committees’ capacity if that should happen. Elisabeth, do you want to add anything there?

[64] **Ms Jones:** As it raises Standing Orders, Presiding Officer, could I rather weakly hand it over to Chris?

[65] **Mr Warner:** I think that there is quite a lot of flexibility already in the Standing Orders. You have mentioned additional amending stages, if required. We have also strengthened the process for looking at timetables for Bills, so, when the Business Committee is considering a timetable for a Bill, it will now write to the Chair of the committee that is going to scrutinise the Bill to consult with them about the timetable. We know that committees can write to the Business Committee to ask for more time—as they did with the Social Services and Well-being (Wales) Bill, for example—when it becomes apparent that the work is not going to be able to be fitted into the time originally allocated. So, I think there is quite a lot of flexibility for committees to take the time that they need within the existing Standing Orders.

[66] **Suzy Davies:** We have some pretty meaty pieces of legislation coming up now, with 18 months of this Assembly left, and quite a substantial part of the legislative programme to go, after a very quiet start. Do you anticipate that the Business Committee will be getting requests for extended periods of time, even though you have timetabled it very carefully, or perhaps even setting up ad hoc committees to deal with a sort of sudden surge of legislative overload, particularly because—you are quite right—certain committees deal with legislation

far more than others?

[67] **The Presiding Officer:** Yes. That is going to be the big issue. The majority of Bills coming through are all in a small number of committee areas, so those committees are going to be very busy. Ad hoc committees could be set up, but I do not think that that is the way forward. I think we have to make sure that, before Bills come forward, all of the little snags are ironed out, but then, if we do get new concepts or a significant number of amendments, obviously, we have to allow time for those. As Chris has said, we can always ask for more time for committees, but I am hoping that the Government will learn that that is not going to be the way forward and that we have to get things right before the Bills actually come.

[68] **Suzy Davies:** Do you foresee any Bills falling out of the timetable due to lack of time?

[69] **The Presiding Officer:** My job is to try to make sure that they do not, but it depends when the Government introduced them and how long they take to go through. I do not have a crystal ball, but, at the moment, I would say that we are going to be very busy.

[70] **Suzy Davies:** Okay. That was a naughty question, actually. Finally on that, behind the scenes, we have the Commission's ability to help us scrutinise legislation. Bearing in mind the surge in legislation that I have just mentioned, would you have any comments on the current capacity of the Commission to be able to help us do our work?

[71] **The Presiding Officer:** I think that the help given to individual Members' Bills is quite exceptional. I have looked at other Parliaments to see what they do and we do give a lot more help to backbenchers to make sure that their Bills are good Bills and go through. It would help, when a backbencher introduces a Bill, if the Government is going to accept it or move forward with it, it comes in at an earlier stage to say that. That would be helpful, because it does, sometimes, tends to stretch it out a little and then says, 'Oh, well, we'll take this forward as a Government Bill'. That would be helpful.

[72] However, at the moment, what I am saying is that we have the resources and we will make sure that Members get the resources. If, however, we finally get to the stage where resources are tight, we will just have to ask for more funding and try to find some more. We cannot take any more backbench legislation at this time, because we do not have the resources for it.

[73] **Suzy Davies:** Okay. Thank you very much.

[74] **David Melding:** I think Alun has a question, before we move on, then I will take Simon and then we will go on to the next phase of our questioning.

[75] **Alun Davies:** Thank you very much. You touched upon this in your written evidence and I appreciate the answers that you have given, Presiding Officer, in terms of the capacity of this place to deliver legislation. The Government has a right to its legislation and the Assembly has a responsibility to provide scrutiny, so there will always be that tension between the two institutions. However, in terms of managing committees' workloads and setting up ad hoc committees and the rest of it, is not the hard reality that—and you do touch on this in your evidence—given the current size of the Assembly, we are approaching the maximum potential capacity of this Assembly to carry legislation, and, unless we have an increase in the membership and size of the Assembly, we simply will not be in a position to provide the scrutiny necessary to deliver additional legislation?

[76] **The Presiding Officer:** In the long term, that is the case—or in the medium term. At the moment, and in the next few years, we will provide that legislation and we will make sure

that we do. In fact, I had a conversation only this morning about the size of the Assembly and I think that there is a general feeling now that we need more Members. How many more Members is the big debate, and when they will come. What we have to do is to manage in the short term, in the interim, and we have to make sure that Members get as much help as they possibly can to make sure that they are scrutinising laws and introduce their own Bills to the best of our ability. I am not saying that it is going to be easy, but we will find a way around it. I think that one of the Government of Wales Act 2006 conditions, that the Government of Wales decides how big our committees should be, is something that needs sorting out. Hopefully, that will be sorted out quite quickly. If that is the case, then we can look at the committee structure. However, in the meantime, we have to manage with what we have now—and I think that we are doing a very good job—and make sure that we have the resources to allow the Members to carry on doing that.

[77] **Alun Davies:** I accept that. I do not disagree with the points that you make, but it is clear—since we have said that, 18 months before the end of this Assembly, no backbench Member of the Assembly now has the ability to bring forward legislation—that that capacity must now have been reached. It must be something of a disappointment that a Member now no longer has the ability to bring forward a proposal for legislation, not because there are no proposals for legislation and not because no Members wish to do so, but because we do not have the capacity here to deal with it any longer.

[78] **The Presiding Officer:** Well, we have three on the books at the moment from backbenchers and one in the pipeline. I think that it goes for any parliament that you will get to a stage where you cannot possibly take all of the Bills that everyone wants to bring forward. You have to work within what you have. As I said, we have three—possibly four—in the next 18 months, and I do not think that you would want any more than that, because the Members would not be able to scrutinise it, never mind about the resources to actually deliver the Bill. I am looking at it as glass half full, and you are looking at it as glass half empty, I think, at the moment.

[79] **David Melding:** I suppose that there is an issue that, if the Government had choked everything off immediately, we would still be able to take further opportunities, but it is an interesting point that I think we can reflect on.

[80] **Simon Thomas:** I just wanted to go back to the way that Bills are amended and further discussion on the Bills. Clearly, there is some flexibility in Standing Orders. We can have a report stage, for example, which allows the Assembly to look afresh at a Bill that has been heavily amended. However, what that does not allow is for that wider stakeholder involvement that Stage 1 initially engaged with. I just wondered whether you had any concerns, with regard to the experience so far, that we have had Bills that have had a lot of stakeholder engagement at Stage 1, and, of course, it is one of the purposes of the committees to do that, that then get amended quite heavily, and although Assembly Members—and that is one of our main jobs—are there to do that job, nevertheless there is not the time or the space within the process to have that further iteration with stakeholders or the wider community about whether the Bill is still fit for purpose as originally identified.

[81] **The Presiding Officer:** Actually, we have an example of that, which is the Local Government (Democracy) (Wales) Bill. The Government went out to consultation over Christmas, which was not a good time. So, the Business Committee agreed that it would extend the time for consultation so that people could have a look at it, as people are on holiday over Christmas. However, it is an issue where you get a lot of amendments following Stage 1. I think that time needs to be factored in to make sure that stakeholders do actually get the opportunity, because the laws are about the people of Wales, and, if they cannot have their say in them, then they are not going to be fit for purpose at the end. Again, hopefully, the Government is getting a bit more sophisticated now at putting Bills in, and we are not going

to get as many amendments, certainly not as many as we had to the Social Services and Well-being (Wales) Bill. I think that we all remember the Social Services and Well-being (Wales) Bill with great affection. I think that everything is getting a bit more sophisticated, so, hopefully, that will not be the case, but, certainly, it is very important that everyone who had the initial input should have a second input, if necessary.

[82] **Simon Thomas:** Just to follow up on a similar theme, you have said in your evidence, certainly orally, if not in the written evidence, that you had seen more amendments coming forward from Members themselves, and many of those amendments are probing amendments, that is, to test out policy options, really, which is a very appropriate method in my view. Do you have any sense, however, of how many amendments have actually been suggested by the public or civic society in Wales or stakeholders? Obviously, that would be through Members, but is there any sense that people are starting to feel that this is a parliament that they can lobby—I do not mean that in the bad sense of the word, but, effectively, lobby—and try to get their own ideas into legislation?

[83] **The Presiding Officer:** I know that it is happening, but I do not have any figures, so it might be worth us doing an exercise on that. Certainly, some of the larger lobbying organisations and the bigger charities are having an input, and I have a sense that some of the smaller groups are as well, but I do not have any figures for that. I think we could look at that, Chair.

15:00

[84] **David Melding:** We will look further at that when we have various representatives from the third sector in. I think it is a very interesting theme, so I am sure that we will want our report to look at that. If there is nothing further on that, I will ask William to take us on.

[85] **William Powell:** Thank you, Chair. Good afternoon, Presiding Officer. I would like to thank you very much for the comprehensive evidence that you have presented to us in written form and also for the candour with which you have addressed some of the issues that we clearly need to address. Staying, for my first question, on the theme of capacity, I wonder whether you could expand on your thoughts as to the Commission's view on the Welsh Government's capacity in the field of legislation.

[86] **The Presiding Officer:** It is interesting: the fact that that the Government is looking at that capacity means that it understands that there has been a lack of capacity and is addressing it, and I am pleased that it is addressing it. However, it is a concern, right across the board, particularly on drafting and issues like that, because we all know that drafting in Wales is a skill that is in short supply, and the more Bills that are coming forward, the more pressure is actually being put on it. As far as the capacity of the Assembly is concerned, I think that we referred to that on the number of Members. Do you want to make any comment on the Government capacity?

[87] **Ms Jones:** No. I do not think it would be appropriate for me to comment on that.

[88] **David Melding:** It would be interesting.

[89] **Ms Jones:** I entirely endorse what the Presiding Officer has said.

[90] **William Powell:** I respect that. Also, in terms of amendments, what is your view as to whether all amendments should be required to have explanatory text attached? This has been a theme in a number of submissions that this committee has received in terms of the current inquiry.

[91] **The Presiding Officer:** I think amendments are really interesting, are they not? If they are technical amendments, because somebody has got the wording wrong in the first place, then I really do not approve of those, but they have to be done. However, when an amendment is actually exploring a new idea or bringing something forward, then I think it is really important that they are taken on. We talked about explanatory memoranda earlier on, and I think the more information that Members have before they start discussing an amendment, it can only be helpful. It also helps to tease out new ideas from Members. As Simon Thomas said earlier on, it is the capacity of Members to actually know what is behind an amendment that is so important. Does that answer your question?

[92] **William Powell:** Yes. That is helpful. In your written evidence to this committee, you do refer to the importance of the financial scrutiny of Bills and the importance of working for improvement in that area. I think this may be of particular concern in terms of the current Well-being of Future Generations (Wales) Bill, because, by common consent, given the nature of the Bill as presented, there is going to be a pretty high level of amendments coming forward in the coming stages. How do you feel that financial scrutiny can be safeguarded and improved in that context?

[93] **The Presiding Officer:** I think, as you know, the main committee has the opportunity and responsibility to scrutinise the Bill in terms of the financial implications, just as a committee would undertake financial scrutiny in the scrutiny of policy, so that is there already. I think we are back to the fact that a good explanatory memorandum would help improve the financial scrutiny of any Bill. That goes without saying. Again, if we had more Members, it would allow greater scrutiny of everything generally. However, in terms of finance, it is up to the main committee, the policy committee, to have a look at it, but, if another committee feels that part of the Bill comes within its portfolio, then it can also have a look at financial scrutiny of that Bill.

[94] **William Powell:** That is helpful. Thank you.

[95] **David Melding:** It might be helpful for the flow, William, if you asked the question now on emergency Bills and fast-tracking.

[96] **William Powell:** Yes, indeed. Presiding Officer, one of the things that you do address in your evidence are some of the concerns regarding what the Chair has just referred to, the use of fast-track and emergency procedures for Bills. I wonder whether you could outline what criteria you think should be developed to improve our work in that area.

[97] **The Presiding Officer:** Well, obviously, there will be occasions when emergency Bills must come forward, but I would like to see that they are as few and far between as possible, because how does the public get to scrutinise those Bills? That goes back to the point about getting stakeholders involved.

[98] There is also a reputational risk to the Assembly—if you bring in too many of these emergency Bills or fast-track Bills, again, it looks as if the Government is not really preparing itself far enough in advance. We had one emergency Bill—I think that Alun Davies is well aware of that one—which caused a lot of comment as to what is and what is not an emergency Bill. The Government might think it is an emergency but I might not think it is an emergency, so if we can avoid that kind of implementation, I would be very pleased. Do you want to add anything to that or not?

[99] **Ms Jones:** Again, Presiding Officer, I entirely agree; the important thing is that the flexibility is there within Standing Orders to allow for that where appropriate, and that that is not abused.

[100] **The Presiding Officer:** We must make sure that the process is transparent and accountable, and, if there is fast-tracking, you do not always get that opportunity.

[101] **William Powell:** One other point that you alluded to in your evidence was the danger of bringing in imperfect or sub-optimal aspects of that legislation when it is derived from another place.

[102] **The Presiding Officer:** It is very important. We all remember the changes made to the Dangerous Dogs Act 1991. That is the problem as well, is it not? All dogs are dangerous, but when that was passed, people were in a rush to get the Bill through.

[103] **Alun Davies:** The Dangerous Dogs Act 1991 is probably over-quoted in terms of trying to learn the lessons from one piece of legislation.

[104] **The Presiding Officer:** It is a nice quote.

[105] **Alun Davies:** The Presiding Officer is right; I do have an interest in this matter in bringing forward two pieces of legislation, neither of which used the emergency process as laid down by Standing Orders. In terms of the approach to legislation, I do not disagree with the general point that fast-tracking a Bill should not be considered the norm. However, I would like to take you a bit further than what you said about whether it should follow the same process. Are you saying that there can be only one process for a Bill to become law, and that all Bills have to follow that process so that it is a one-size-fits-all process?

[106] **The Presiding Officer:** No, I did not say that.

[107] **Alun Davies:** That is the question I am asking.

[108] **The Presiding Officer:** I do not think we can have a debate about whether your Bill was an emergency Bill or not; we will not go into that this afternoon. It certainly seemed like it at the time. Obviously, we have the standard set practice for laws. Everybody understands that there is Stage 1, Stage 2 and Stage 3, and there must be opportunities for bringing things in in emergencies; I am not saying that there should not be. However, we should always look very carefully to make sure that, when a different process is used, people understand it and we do not lose transparency and accountability.

[109] **Alun Davies:** I would not suggest that you have an emergency process or that you have something different; I am trying to tease out something different here. We have the process that you have outlined for a draft Bill to become an Act. What I am trying to understand is whether you believe that that process should be applied uniformly to every piece of legislation, notwithstanding whether that is legislation such as the Social Services and Well-being (Wales) Act 2014 or whether it is a much smaller piece of legislation, or controversial legislation. Do we apply the same process in the same way to every piece of legislation, or do we have the flexibility to be able to determine that a piece of legislation can be treated differently?

[110] **The Presiding Officer:** Basically, it is the same, but the Assembly can decide not to have a further Stage 3 or a Report Stage. The process is there, and you have to have very good reasons not to have them. However, if it was generally felt that we did not need a Report Stage, we would not have a Report Stage. If there are lots of amendments during Stage 3, you need to make sure that you reflect carefully before Stage 4. If there are not many amendments, you do not need a Report Stage. So, I think the process should be the same, but there could be different ways of introducing a Bill; you could have a committee Bill, a backbench Bill, a Commission Bill, a Government Bill, but I think the process basically needs to be the same, otherwise there will be chaos and people will not know whether they are

coming or going. I do not quite know what you are trying to get at there, Alun, but—

[111] **Alun Davies:** I am asking about flexibility.

[112] **The Presiding Officer:** There is flexibility in the system, absolutely. But, again, it is up to the Members, it is up to the committees and it is up to the Assembly.

[113] **David Melding:** If it is the Welsh Government that wants the flexibility and not the Assembly, then that has to be tested publicly, I think, or at least I would hope so. Simon is next.

[114] **Simon Thomas:** Just on this, clearly, Standing Orders have to provide for emergency or fast-tracked legislation. Of course, it is not just Bills; it also includes regulations, and the council tax regulations come to mind. Once that is done, however, Standing Orders provide for that, but it strikes me that there is no provision for Standing Orders, later, to ensure that there is a kind of double-check on whether that legislation was, in fact, really needed or how it has been implemented. Of course, committees can always convene and do an inquiry like that themselves, but we have already discussed some of the pressures that are on committees, in terms of time, and on Assembly Members, in terms of numbers and the spread of non-Government Members as well. So, is there anything that you would like to see, going forward, that builds into Standing Orders some kind of reference system that ensures that, if any of these emergency or fast-track procedures are used, there is actually some way of, further down the line, having that break and saying, ‘Let us look at this legislation now to see how it was implemented and learn the lessons of its relevance to an emergency or not’?

[115] **The Presiding Officer:** I do not think that it is just about emergency and fast-tracked Bills; I think that that should apply to all Bills.

[116] **Simon Thomas:** Perhaps it should, but I do not think that we have the capacity to do that is what I put to you.

[117] **The Presiding Officer:** I think that, perhaps, having discussed the questions that you might have asked today, something has come up—that, really, somebody should be looking at whether Bills have been implemented and whether that was good or not. Who is going to do that? There is, again, a resource issue.

[118] **Simon Thomas:** Or looking at whether they have all been commenced, even.

[119] **The Presiding Officer:** Exactly. Somebody needs to do that piece of work. Whether that is a committee or the Commission, we need to look at that, because it is not something that we had thought about before coming here today. However, I think that that principle goes right across the board. I do not think that it needs Standing Orders; we just need to make sure that somebody looks at it and comes back to a committee or somebody to say, ‘Well, okay, that really was not necessary’, or, ‘Yes, that is fantastic, but it should have been implemented a bit more quickly’.

[120] **David Melding:** Alun, I think that we have covered the point on the Members’ Bills. Do you want to ask anything on the procedure for consolidation?

[121] **Alun Davies:** We do discuss, and we have discussed, the consolidation of legislation, and you referred to it earlier in your evidence this afternoon. Presiding Officer, do you believe that we have the processes in place to enable the consolidation of legislation at present, or do you believe that we need to work harder on that matter?

[122] **The Presiding Officer:** We need to work harder and, perhaps, smarter on everything,

really. I will ask Elisabeth or Chris to come in on that.

[123] **Mr Warner:** Shall I go first on the procedural side? That is one example of a Bill where we would expect a different procedure to apply, as it does in other parts of the UK, and that is part of the Business Committee's forward work programme—to look at a new Standing Order for consolidation Bills to prepare ourselves in case we get one. I will hand over to Elisabeth on the technical side of it.

[124] **Ms Jones:** I would just stress that we consider that consolidation could be an incredibly important contribution to solving the accessibility problem of Welsh legislation. I can just leave it at that, or expand on it more, as you like, but I am conscious of the committee's time.

[125] **David Melding:** There has been a lack of demand, so far, I think, although is the Government not working with the Law Commission on this general area? So, there is likely to be more action in the next Assembly, is there not? I think that that is the point.

[126] **Alun Davies:** The key point, for me is Mr Warner's point that the capacity and resources are available from the committee service to facilitate such a process, were that to be demanded, or requested, by Government.

[127] **The Presiding Officer:** Yes, but I think that consolidation is not just for here—it is a Westminster thing as well, so it has to be a major piece of work right across the board, because we have a very difficult statute book already, and we would love it if somebody could sort it out.

[128] **Alun Davies:** I think that there is broad agreement across the Chamber that we need a process of consolidation, and it is good to see that the capacity and resources are there to enable it to happen; I am content with that.

[129] **David Melding:** Simon, do you want to take us through the next set of questions?

[130] **Simon Thomas:** Mae gen i set o gwestiynau yn y Gymraeg, os caf i? Roeddwn yn edrych ar y Biliau sydd wedi cael eu pasio gan y Cynulliad, a, blwyddyn union yn ôl, pasiwyd Bil gan y Cynulliad hwn nad yw eto yn gyfraith, oherwydd ei bod yn dal yn y Goruchaf Lys, sef y Bil Adennill Costau Meddygol ar gyfer Clefydau Asbestos (Cymru). Beth wnewch chi o sefyllfa lle mae'r Cynulliad yn gallu pasio Bil a, blwyddyn wedyn, nid yw'n dal i fod yn gyfraith?

Simon Thomas: I have a set of questions that I will ask in Welsh, if I may? I was looking at the Bills that have been passed by the Assembly, and, exactly a year ago, a Bill was passed by this Assembly that is not yet law, because it is still in the Supreme Court, which is the Recovery of Medical Costs for Asbestos Diseases (Wales) Bill, of course. What do you make of a situation where the Assembly can pass a Bill, and, a year later, it is still not law?

15:15

[131] **The Presiding Officer:** As I outlined in my submission, I feel quite strongly that the Assembly should have the right to represent itself in the Supreme Court, but that has not found favour, and that—

[132] **Simon Thomas:** As a party to a case, you mean. It is that kind of—

[133] **The Presiding Officer:** Yes; I beg your pardon—not just turning up willy-nilly. We are relying on the Welsh Government to represent us as an Assembly, but we are a mature

parliamentary body, and I just think that we should be there. However, it is interesting, is it not, that it is a year on, and the urgency seems to be disappearing? How we can do anything about that, I am really not sure. I really do not know. Has anybody got any ideas on how we can influence the Supreme Court?

[134] **Simon Thomas:** Mae'n amlwg pe bai'r Cynulliad ei hun yn gallu bod yn barti mewn unrhyw drafodion yn y Goruchaf Lys y byddai hynny yn gam ymlaen, ac yn enwedig gan ein bod yn sôn yn y fan hon am Fil sydd wedi deillio o'r meinciau cefn. Nid Bil Llywodraeth oedd hwn, ond Bil un o Aelodau'r meinciau cefn. Fodd bynnag, mae'r cwestiwn yn mynd ymhellach, rwy'n meddwl, hefyd. Mae hefyd yn adlewyrchu'r gwendidau sydd yn y systemau presennol sydd gennym ni, onid yw e? Fe wnaethoch chi sôn yn eich cyflwyniad am benderfyniad cadarnhaol y Goruchaf Lys yng nghyd-destun y Bil sector amaeth, ond mae'r ffaith bod y penderfyniad am y Bil arbennig hwn wedi ei ohirio mor hir yn adlewyrchu, yn fy marn i, y gwendidau sydd yn y system pwerau a gedwir yn ôl a'r angen i symud tuag at system wahanol. A ydych chi, erbyn hyn, yn weddol hapus gyda'r cynigion gwahanol, sydd wedi dod yn weddol o glou, i wella'r Bil sydd gerbron San Steffan ar hyn o bryd ac i symud tuag at system well? A ydych chi'n meddwl bod hynny'n ddigonol erbyn hyn?

Simon Thomas: Clearly, if the Assembly itself could be party to any discussions in the Supreme Court, that would be a step forward, particularly as we are here talking of a Bill that has emerged from the backbenches. This was not a Government Bill, but an individual Member Bill. However, the question goes further, I believe, as well. It also reflects the weaknesses in our current systems, does it not? You mentioned in your opening remarks the affirmative decision taken by the Supreme Court in the context of the agricultural sector Bill, but the fact that the decision on this particular Bill has been delayed for so long reflects, in my opinion, the weaknesses in the reserved powers system and the need to move towards a different model. Are you now relatively content with the various proposals, which have come forward relatively quickly, to amend the Bill that is before Westminster at present, and to move towards an improved model? Do you think that that is now adequate?

[135] **The Presiding Officer:** I am very pleased that things are moving apace, and I had discussions this morning with the Secretary of State for Wales. His approach is really quite refreshing, and we are moving at quite a pace. Reserved powers—fine; but we need to discuss what we are talking about with reserved powers. I made the point, and I have made it several times, that we should move to reserved powers as soon as is practical, but we do not want to lose any powers that we already have. I do not want anything slipping off the edge. However, as far as the Supreme Court goes, the Government did put a very good case. It did what we asked, so we were not disbenefited there. However, the quicker that we can get to reserved powers, the more sense there will be for everybody, and we can all understand exactly where we are going. The agricultural wages Bill and the asbestos Bill have gone to the Supreme Court, which just shows how nobody really thought it out when the Government of Wales Bill came in. So, hopefully, that will move apace, and I am getting the feeling that everybody else is saying the same thing at the moment.

[136] **Simon Thomas:** Er bod, fel rydych chi'n dweud, y ffaith bod camau reit bendant wedi cael eu cymryd yn ddiweddar yn galonogol, yr hyn roeddwn i'n trio'i ofyn hefyd oedd: a ydych chi'n hyderus bod y broses yn un lle na fyddwn ni'n colli cymhwysedd mewn un maes neu'i gilydd? Mae cymhwysedd yn rhedeg ar draws y Cynulliad ond mae hefyd yn nwylo Gweinidogion Cymru, wrth gwrs. Mae

Simon Thomas: Although, as you say, the fact that some quite definite steps have been taken recently is encouraging, what I was also trying to ask was: are you confident that the process is one whereby we will not lose competence in one area or another? Competence runs across the Assembly, but it is also in the hands of Welsh Ministers, of course. There are different types of competences and ways of working in that

gwahanol fathau o gymwyseddau a gweithredu yn yr ystyr hwnnw. Yr hyn nad yw'n glir ar hyn o bryd yw ble mae'r broses o drafod hynny mewn ffordd gyhoeddus a gwneud yn siŵr bod y symudiad hwn yn un sydd yn fuddiol, yn gyfan gwbl, i'r Cynulliad? A ydych chi'n hyderus bod hynny'n mynd i ddigwydd?

sense. What is not clear at present is where the process of discussing that in the public arena and ensuring that this shift is one that will be beneficial, in its entirety, to the Assembly rests? Are you confident that that will be the case?

[137] **The Presiding Officer:** I am fairly confident, but I am going to put steps in place to make sure that we scrutinise everything that is happening. My concern is that in the—I will not say 'aftermath'—wake of the Scottish referendum, people are rushing into things in one direction, which means that our direction might be slightly overlooked. So, it is very important that we—all the political parties, the First Minister and myself—scrutinise everything that is happening. Sometimes, things just slip off the edge.

[138] **Simon Thomas:** Rwy'n falch o glywed eich bod chi, fel Llywydd y Cynulliad, yn mynd i wneud hynny yn ogystal, achos er bod job o waith i'r pleidiau gwleidyddol, nid yw'n unig ar gyfer y pleidiau gwleidyddol. Mae yna rywbeth sefydliadol yn y fan hon hefyd. Os caf i fynd yn ôl at un agwedd ar y pwyllgorau ac awgrymu bod gwrthdweud yn eich tystiolaeth ysgrifenedig i'r pwyllgor. Ar yr un llaw, rydych yn glir iawn yn dweud bod y ffaith bod y pwyllgorau polisi yn craffu ar ddeddfwriaeth yn gryfder, ac rydych yn gweld ei fod yn gryfder craidd i'r system. Ond, rydych hefyd yn cydnabod yn y dystiolaeth bod ambell i bwyllgor yn gwneud nemor ddim craffu ar ddeddfwriaeth oherwydd natur y maes polisi mae'n gyfrifol amdano. Mae'r rhan fwyaf o ddeddfu yn digwydd ym maes iechyd ac addysg. A oes unrhyw wersi i'w dysgu ar gyfer y Cynulliad nesaf o'r broses honno, achos mae ambell un wedi awgrymu yn y dystiolaeth i'r pwyllgor y dylem ystyried a ddylai pwyllgor pwnc wastad fod yn bwyllgor craffu hefyd?

Simon Thomas: I am pleased to hear that you, as Presiding Officer of the Assembly, are going to do that too, because although there is a job of work to be done by the political parties, it is not just a matter for the political parties. There is an institutional issue here too. If I could return to one aspect of committee work and suggest that there is some contradiction in your written evidence to the committee. On the one hand, you are very clear in saying that having policy committees scrutinising legislation is a strength, and you note it as being a core strength in the system. However, you also say in your evidence that some committees undertake hardly any scrutiny of legislation, because of the nature of the policy area for which they are responsible. Most legislation is in health and education. Are there any lessons to be learned for the next Assembly from that process, because some have suggested in evidence to this committee that we should consider whether subject committees should always be the scrutiny committee?

[139] **The Presiding Officer:** This was definitely something discussed at great length by the Business Committee at the beginning of the Assembly. It was decided that, to give Members more strength if they were on a committee that looked at the legislative and policy developments in one area, it would make a smoother and better path for legislation. I do not see anything that tells me that that is not happening, but we will keep an eye on it and obviously it will be reviewed. It will be up to the next Assembly to decide whether it chooses to reform, but we will make a recommendation to the next Assembly whether it should have it. Again, the size of committees is an issue. If we have different sized committees, we might be in a totally different ball game, which would mean—. We have in the past had scrutiny and legislation separate, but I do not see anything telling me that it is not working.

[140] **Simon Thomas:** I am not suggesting that it is necessarily not working. As it happens, we have had fairly stable committee membership, but that is not necessarily always going to

be the case, particularly if there are more parties here and if there is a less consensual approach to some of these things, if I can put it like that. One thing that struck me is that, though it may work very well if you are for four years on an education committee as I have been and have been able to go through several Bills and build up that body of knowledge, it does not help you if you are suddenly presented with a Bill on a committee that has not done a Bill for three or four years. It does not help the overall shape of trying to manage 60 Members—in effect, much fewer than 60 Members—to do the scrutiny, if 20% or 25% of your scrutiny membership is parked on a subject committee that is never looking at Bills. The other side of the coin, though it allows for policy expertise, is: have we developed our legislative expertise to the same level? In other words, do we have Assembly Members who know how to scrutinise legislation and have a good understanding of how legislation works in order to hold Government to account? Is that an issue that also should be considered as part of this?

[141] **The Presiding Officer:** We have put in place continuing professional development and training for Members who, outside, in their previous role, would never have done any legislation. We have some really interesting courses for you to take up. They are gaining expertise.

[142] **Simon Thomas:** Widely welcomed by the *Western Mail*.

[143] **The Presiding Officer:** Pardon?

[144] **Simon Thomas:** Widely welcomed by the *Western Mail*. [*Laughter.*]

[145] **The Presiding Officer:** I am sure.

[146] **David Melding:** We will move swiftly on.

[147] **The Presiding Officer:** It is certainly welcomed by the Members. I think that that is the point. They do bring the Government to account. They are looking in far greater detail at the scrutiny of Bills than they would have done without that training. It is something that—. The proof of the pudding is in the eating, as they say. I would like a bit more time to see these committees working, to see if there is anything that says that this is not a good way of doing it. I am not saying they would not change it, but I think that, at the moment, it is quite effective. I accept that there are some committees that do not have legislation at the moment. Perhaps you can make a bid to go on one of those committees, to have a bit of respite.

[148] **Simon Thomas:** Perhaps I like legislation. [*Laughter.*] I am concerned about my fellow Members who have not done a Bill yet.

[149] **The Presiding Officer:** That is something that we can perhaps look at.

[150] **Ms Jones:** The Enterprise and Business Committee did active travel.

[151] **The Presiding Officer:** The active travel Bill went to all the committees, did it not?

[152] **Ms Jones:** That went to enterprise and business.

[153] **Simon Thomas:** Yes, it did. It was a very heavy Bill, that one.

[154] **David Melding:** Alun, you wanted to make a point.

[155] **Alun Davies:** If I could develop this a bit further, I do not disagree with the theory of the position that a committee that deals with a policy area is best qualified then to deal with

legislation within that policy area. I think that that is very clear and coherent. What happens, and what will happen in some committees at the moment, is that, because it is to deal with so much legislation, it is unable to hold the Government to account for long periods of time. Certainly, speaking from my experience, committees are a far more powerful form of accountability than simply asking questions in the Chamber. So, what happens, essentially, is that the committee, because it is dealing with Government legislation, does not hold the Government to account, and that can happen for significant periods of time. I have concerns about that. I think that we need to ensure that we retain mechanisms where Ministers and Government are held to account and policies scrutinised while at the same time being able to deliver legislation.

[156] **The Presiding Officer:** Well, that will be up to the Chairs of committees. If the Chairs come to tell me that that is the case, obviously the Business Committee will have to look at it. However, at the moment, I have not had that feedback from Chairs.

[157] **David Melding:** I think that that completes our questions, unless there are Members who want to add anything further.

[158] **Suzy Davies:** I noticed in your written evidence, particularly in the area where you are asking committees to perhaps take a longer view of the work they do and to perhaps build in a period for post-legislative scrutiny, which I think is an interesting point in itself, that you said, with regard to committees, that

[159] ‘it may be helpful for them to consider their approach when they undertake Stage 1 scrutiny. They may wish to consider scrutinising Commencement Orders, for example, where these include provisions other than the date of commencement’,

[160] which, of course, most of them do. This committee talks about this quite a lot and is constantly encouraging Government to allow commencement Orders to have some sort of procedure attached to them. We are quite happy for that to be negative—we are not asking for too much. I noticed that, in one of the Members’ Bills that is coming before us, the Financial Education and Inclusion (Wales) Bill, there is negative procedure attached, but Government remains resistant. Do you have a particular view on how we can scrutinise commencement Orders, other than the commencement date itself, when there is no procedure attached to commencement Orders as a rule?

[161] **The Presiding Officer:** Well, there does not have to be procedure attached to it. If there is an agreement that Government would like to bring more information forward earlier—not just on this issue, but it is looking at—. I cannot say that. There was discussion about it being interested in bringing proposed Bills to committees well in advance of actually introducing the Bill so that they would get a much better grounding in it. So, it is the same kind of thing, is it not? It is early discussion but not necessarily with procedure. I am not sure what procedure would be—

[162] **Suzy Davies:** Well, the reason I ask is that, because there is no procedure attached, we would not know when it is being introduced—or activated; is that the word?

[163] **The Presiding Officer:** I was going to ask what sort of procedure we could put in in order to do that.

[164] **Ms Jones:** Well, we could use any of the standard Assembly procedures, as is being done in the Bill of which Bethan Jenkins is in charge. As the Presiding Officer says, we could attempt to create a convention with the Government whereby it voluntarily, if you like, submitted information to this committee in advance of commencement. I suppose that another way, which Members already operate, actually, is to use the amendment process—the Stage 1

and/or the amendment process of the Bill—to table probing amendments around the commencement and use that as an opportunity to get more information out of the Government as to when it intends to commence and why it intends to commence in a particular order.

[165] **The Presiding Officer:** However, that does not bring it forward, which is what you want.

[166] **Suzy Davies:** It is just so that we know it is happening so that we can build it into a timetable for committee.

[167] **David Melding:** Presiding Officer, I do have one final question, if I can take advantage of my position in the Chair. We did receive evidence from the Government that it was having problems with the legislation software, which I understand was procured jointly between the Assembly and the Welsh Government. As it has to go through that format, it is time-consuming for it and it has had an effect on the accuracy of its drafting. What are the experiences from your side about that software and the advantages of using it?

[168] **The Presiding Officer:** Well, I know that there are experiences. I am not sure what they are, so I will hand over to Chris.

[169] **Mr Warner:** The clerks who use the software have been very impressed with it. The software is complex and requires training to use and to use precisely, but we have overcome some of the teething problems that we had at the start and it is working very well for us. So, we are talking regularly to the Government to share issues and experiences and to make sure that we all have the benefit of joint learning.

15:30

[170] **The Presiding Officer:** I think that that is the point. Are we using it in Bethan Jenkins's Bill?

[171] **Mr Warner:** Yes.

[172] **The Presiding Officer:** Yes. We are using it as part of Bethan Jenkins's Bill.

[173] **David Melding:** Okay. We are very satisfied with it, basically.

[174] **Simon Thomas:** I have one last question. It is something again that you mentioned in your evidence, Presiding Officer. It is regarding the statute book, if you like, and the availability of information on Welsh law for the public. The Welsh Government has talked about this for three years now, and it seems to be that legislation.gov.uk or whatever, and other national archives, are very slow coming forward with this comprehensive overview of where we are. Have you any views on how that has been developing, and how it relates to the reputation of the Assembly as a legislative body—that that information is not readily or easily available to the public?

[175] **The Presiding Officer:** It should be, but again, it is resources and this is the difficulty. I did have a conversation about whether it should be outwith the Assembly, and outwith the Government—perhaps a university should take it on board, so that it would be seen as an independent overview of what is happening. It certainly needs to be out there, but who will deliver it, I am not sure. It is one of these things that we all think is a good idea, but it just gets pushed to the bottom of the pile a little. However, it is back to what we talked about earlier on, about knowing when different parts of different Bills are being implemented. So, somebody needs to do that work. We do not have the resource, and I am not sure that the Government has the resource either, so whether we can commission a university to do it, I do

not know. We will certainly have discussions on it, and I will come back, Chair, with some thoughts on that perhaps.

[176] **David Melding:** Dame Rosemary, I thank you and your officials for what I think was a very productive and useful session of evidence for us. Thank you for taking the time this afternoon to appear before us. We will adjourn until 15:40 and then conduct the second session of evidence with the Members who have had experience of bringing in legislation.

[177] **The Presiding Officer:** Thank you very much.

*Gohiriwyd y cyfarfod rhwng 15:32 a 15:39.
The meeting adjourned between 15:32 and 15:39.*

Tystiolaeth Mewn Perthynas â'r Ymchwiliad Deddfu Evidence in Relation to the Making Laws Inquiry

[178] **David Melding:** Welcome back, everyone. We are in public session once again, taking evidence relating to our making laws in the fourth Assembly inquiry. I am delighted to welcome three of our colleagues in the Assembly, Mick Antoniw, Peter Black, and Bethan Jenkins, who all have direct experience—or are having, at the moment, direct experience—of the legislative process here, by winning the backbench Member ballot. So, we are really grateful to you all for giving up your time this afternoon.

[179] There is a series of questions. I think that it is going to be a slightly different session to when we have one witness, and then we just, obviously, focus the questions on that one individual. So, I think that, if you want to catch my eye and say anything on each particular point, that is fine, but I am not going to go through each of you in succession, so that you will not feel that you have to say something, even if all the points have been covered. That ought to get us through the evidence session fairly economically. I will ask Suzy Davies to start us off.

[180] **Suzy Davies:** Thank you, Chair. I ask my questions in some trepidation, as I still have two Bills in the ballot—thank goodness, they have not been drawn. What level of work did you have to do before you put your names into the ballot, and what sort of advice did you take, perhaps even from the Commission staff, on issues such as competence, and the need for legislation?

[181] **David Melding:** Now, that is when you all should probably answer. [*Laughter.*] Who is going to start? Mick.

[182] **Mick Antoniw:** I knew that I wanted to bring some legislation on the issue of asbestos, and I knew quite a lot about asbestos, and about some of the legal challenges that had taken place in other jurisdictions. As for putting in for the ballot, which is a bit like entering the lottery, there was no input whatsoever. I mean, basically, I did a short draft of what I thought the legislation was about, and what its objective was, I put it in, and I wish I had bought a lottery ticket that day.

[183] **Suzy Davies:** I am relieved. [*Laughter.*]

[184] **Peter Black:** It might be because I have won quite a lot of ballots here, but never yet won the lottery—but there we are; we can hope. I did not do a great deal of work. I had a bit of casework on the issue of park homes, and I had spoken to a number of residents there, and so was aware of the issue. I knew that Kirsty Williams had done a lot of work on that, so I had been working with Kirsty, and we basically just both put the same submission in, in the hope

that one of us would be drawn, and, as it happens, I was drawn. So, in terms of the pre-ballot preparation, it was fairly minimal. However, I was aware that there were issues there, I was aware of a need to change the law, and I was aware, from casework that I had had, and that Kirsty had had, of roughly what I wanted to do with that particular proposal.

[185] **Suzy Davies:** Thanks.

[186] **David Melding:** Bethan?

[187] **Bethan Jenkins:** Roedd gen i syniad o ran deddfu ar lo brig mewn yn y balot cyn hyn, ond wedyn wnes i newid y pwnc, oherwydd roeddwn i'n sylweddoli bod lot o bobl yn dod ataf i, yn cwyno am broblemau ariannol, gyda thwf 'loan sharks', ac yn y blaen, ac roeddwn i wedi darllen lot o wybodaeth gan y Money Advice Service a'r Grŵp Addysg Ariannol Bersonol ynglŷn â sut y byddai addysg ariannol yn helpu pobl ifanc. Felly, jyst rhoi syniad o gwmpas hynny—yr un peth â'r gweddill, a dweud y gwir. Nid oedd lot fawr o waith yn y lle cyntaf, ond digon er mwyn bod esboniad digon clir o'r hyn yr oeddwn i eisiau ei wneud.

Bethan Jenkins: I had an idea in terms of legislating on opencast mining in the ballot before that, but then I changed the subject, because I realised that many people were coming to me, complaining about financial issues, with the growth of loan sharks, and so on, and I had read a great deal of information by the Money Advice Service and the Personal Finance Education Group in relation to how financial education would help young people. So, just putting an idea around that—the same as the others, really. There was not a great deal of work in the first instance, but enough so that there was a clear enough explanation about what I wanted to do.

[188] **Suzy Davies:** Thank you. After your names had been drawn—after that moment of panic, I am guessing—what sort of preliminary support did you get from the Commission staff, in helping you to develop the proposals, and to talk about drafting, and that sort of thing? Just in the immediate aftermath, what sort of support did you get?

[189] **Mick Antoniw:** There is a standard provision, as I understand, which is, basically, that you are allocated someone from the legal department, someone from the research department, and someone from the Table Office, who are there to give you assistance. I knew that the legislation that I was involved in, on asbestos, was going to end up in the Supreme Court, so I had managed, actually, to get support from trade unions, to fund, effectively, about £20,000 worth of work, because I knew that there was a serious issue over competence, and that there was likely to be an issue in respect of the human rights legislation as well. So, a lot of that work had been prepared ahead of time, and it is that sort of area of work that I think is, potentially, very, very challenging, if you know you are going down a road where there is going to be a significant competence argument.

[190] **Peter Black:** In a sense, I was a bit of a guinea pig, because mine was one of the first private Member's Bills under the post-referendum legislative process. However, I had quite a lot of support from Commission staff. We carried out an extensive consultation on the proposals, and we drew up a document, which was revised about 20 or 30 times, which is actually drafting the proposals in the Bill for someone to draft it from that, and I had a lot of support in terms of that. The difference, in a sense, between myself and maybe Bethan, is that we did not really have bespoke staff in the Commission to actually draft it themselves, so the head of legal affairs did a bit of drafting, and that, basically, led to the whole thing being redrafted, and working with the Government as a result of that. Since my experience, the Government has put in additional capacity and is training up its lawyers to draft Bills as well. So, I worked very closely with lawyers—a lot of support and a lot of back-up. I think, in my particular experience, we needed the legal training and capacity, which has since been put in by the Commission.

15:45

[191] **Suzy Davies:** Good. What about the explanatory memorandum? Perhaps Bethan can talk about that as well.

[192] **Peter Black:** Again, the research staff helped me to draft that with the legal team, and we also had help from the research staff in terms of the costings of the Bill as well.

[193] **Bethan Jenkins:** Yn wahanol i Peter, rwy'n credu, roedd gen i ddim penodol. Yn y dechrau, roedd rhywun i helpu o'r tîm cyfreithiol, a nawr mae rhywun sy'n gweithio gyda phob person, sy'n rotating—sy'n mynd o gwmpas pawb sydd â Bil gerbron. Mae gen i ymchwilydd ar yr elfen addysg, ymchwilydd ar yr elfen awdurdodau lleol, rhywun i edrych ar gostio, cyfreithiwr, yn amlwg, ac roedd help gan Daniel Greenberg hefyd. Rwy'n gwybod ein bod ni yma yn y Cynulliad, ac nad oes angen imi fod yn neis, ond roedd y Comisiwn a'r staff—ac maent yn helpu nawr gyda fideo rwy'n mynd i'w ddangos ar Stage 1 o fy nadl ddydd Mercher hefyd—wedi bod yn wefreiddiol. Gyda phopeth rwyf wedi gofyn amdano, maen nhw wedi helpu. Yr unig beth y dywedwn i sydd wedi bod yn anodd yw'r ffaith bod lot o'r wybodaeth rwyf wedi ceisio ei rhoi yn y memorandwm esboniadol wedi gorfod dod o'r Llywodraeth, ac roedd diffyg eithriadol gan y Llywodraeth. Roeddwn i'n gofyn ers blwyddyn am gyfarfodydd, gofyn ers blwyddyn am gostio. Pa mor effeithiol y mae'r EM yn gallu bod os nad ydych chi'n cael y wybodaeth gan y Llywodraeth yn y lle cyntaf? Efallai fod yr Aelodau eraill wedi cael profiad gwahanol i mi, ond rwyf wedi gorfod mynd mas a siarad ag awdurdodau lleol i helpu i gostio oherwydd y diffyg gan Lywodraeth Cymru.

Bethan Jenkins: My experience was slightly different to Peter, I think, as I had a specific team. From the beginning, I had someone from the legal team, and now there is someone who is working with every Member on a rotating basis, who goes around everyone who has put forward a Bill. I had a researcher on the education element, a researcher on the local authority element, someone to look at costings, a lawyer, obviously, and there was also support from Daniel Greenberg. I know that we are here in the Assembly, and that I do not have to be nice, but the Commission and staff—and they are helping me now with a video that I am going to show in my Stage 1 debate on Wednesday—have been astounding. Everything I have asked for, they have helped me with. The only thing I would say that has been difficult is the fact that a lot of the information that I have tried to put in the explanatory memorandum has had to come from the Government, and there was an extraordinary lack of support from the Government. I was asking for meetings and for the costings for a year. How effective can the EM be if you do not have that information from the Government in the first instance? Perhaps the other Members have had a different experience from mine, but I have had to go out to speak to local authorities to help with the costings because the Welsh Government was not forthcoming.

[194] **Suzy Davies:** O, diolch.

Suzy Davies: Oh, thank you.

[195] **Mick Antoniw:** May I add to that that there is a very real issue over the amount of research, or the type of research, and the support available for that. I was fortunate in having a lot of support right at the beginning, but when it became necessary to actually do two things, one of which was to actually research the costings of all the medical treatment that individuals would have in respect of asbestos, I found that I had a grant of £2,500 that I was able to pool with another Assembly Member to get some specialist work done, but that only scratched the surface. In fact, it was only because Welsh Government was interested in the legislation and was supportive of it that it then took over that part; otherwise, it would have been a major effort to achieve that. There would not have been the resources within my budget, and it would have been almost impossible. The other area, of course, is that some legislation leads

into areas that are not within our control. For example, in mine, it was a question of who was going to carry out the costing, which was going to be a UK Government body. So, we are introducing legislation within our competence to do something that we want to do, but it is then dependent on Government carrying out the discussions with the UK side in order to see that through—and that, I think, is an anomaly in the process. I had no right to speak to any of the bodies who I was saying were the natural bodies that should be carrying out the costing and the recovery of moneys that the legislation was about.

[196] **Peter Black:** Can I just add that there is a big difference, I think, when you have Government support and when you do not have Government support, in terms of what help you get? I think that there is also an issue about whether the Government thinks it has the capacity to cope with the private Member's Bill you are trying to bring forward as well. I know that I have had discussions about, I think, Darren Millar's Bill with Carl Sargeant when he was the relevant Minister, and he was saying that they did not have the capacity to give the same sort of support as they gave to me. As it happens, they did not need to, because the Commission put additional support and capacity in, but there is an issue about Government capacity as well, which needs to be addressed here.

[197] **Bethan Jenkins:** Wel, mae'r *issue* o gapasiti yn ddiddorol, ac rwyf bach yn sinigaidd am hynny, oherwydd mae'r Llywodraeth yn dewis beth sydd ganddi gapasiti ar ei gyfer. Er enghraifft, gyda fy Mil i, nid yw wedi gwneud unrhyw fath o gostio, ac wedyn mae wedi beirniadu fy nghostio i, wedi'i seilio ar y ffaith nad yw'r *literacy and numeracy framework* yn bodoli. Felly, £4 miliwn yr wyf i wedi dweud fydd y gost, ond mae hynny pe na bai'r *literacy and numeracy framework* yn bodoli. Nawr mae'r Llywodraeth wedi dweud, 'Wel, nid ydym yn mynd i gefnogi'r *financial resolution*'. Felly, yn fy marn i, mae wedi peidio â deall yr hyn rwy'n ceisio ei wneud er mwyn tansilio'r Bil rhag datblygu i'r cyfnod nesaf. Felly, mae'n rhaid inni fod yn agored ynglŷn â sut y mae Aelodau yn deddfu a gwneud hynny'n haws inni, oherwydd, ar ddiwedd y dydd, dyna ein hawl ni fel Aelodau'r meinciau cefn.

Bethan Jenkins: Well, the issue of capacity is interesting, and I am a little bit cynical about that, because the Government chooses what it has got the capacity to do. For example, with my Bill, it has not done any kind of costing work, and then it has criticised my costings based on the fact that the literacy and numeracy framework does not exist. So, I have said that £4 million will be the cost, but that is if the literacy and numeracy framework does not exist. Now the Government is saying that it is not going to support the financial resolution, so in my opinion, it is a refusal to understand what I want to do, to undermine the Bill from developing to the next stage. So, we have to be open in terms of how Members legislate, and we have to make that easier for us because, ultimately, that is our right as backbench Members.

[198] **David Melding:** Those are interesting points. Alun is next.

[199] **Alun Davies:** Thank you very much. The three of you described in different ways the process, and you have given us the narrative of the relationships—or not—with the Government and the rest of it. Could the three of you possibly characterise the experience of winning a ballot and then taking the legislation through—to becoming an Act, in your case, Peter?

[200] **Mick Antoniw:** The first thing is that it is a great privilege. It is one of the exciting parts about the Assembly, that it is more feasible to actually bring legislation through here than it is through Westminster. I was involved in the passage of legislation in Westminster and sat through much of that, and the quality of scrutiny here is as good as I saw taking place in Westminster. It is exciting to know that you are actually able to influence and to change and introduce a specific item of law. That having been said, once you have the authority to do it, it is an enormous responsibility and burden to actually see it through because, one, you are

scrutinised very intensely on what you are doing, so any flaws are identifiable very early, and, secondly, the amount of work, and the pressure on top of an already heavy workload, is enormous. Thirdly—and this is a point that follows on from some of what has been said earlier—our system does not properly assess what level of support or what level of research capacity is required, which is often specialist capacity, whether that be through funding or whatever to enable that to be done. It seems to me that there should be a more specific legislation-by-legislation assessment of what may be required in order to see that legislation through its stages.

[201] **Peter Black:** I would agree with all of that. Essentially, the process is stressful, hard work, time-consuming and immensely satisfying, and I think that that basically sums it up. However, if you have cross-party support, and you have the support of the Government, that does help.

[202] **Bethan Jenkins:** Rwy'n meddwl, yn hytrach na dweud pethau negyddol—ac rwy'n deall pam mae pobl yn dweud ei fod e'n *stressful*—ar ddiwedd y dydd, ei fod yn ffrainc gallu gwneud hyn. Mae wedi gwneud imi dyfu fel Aelod Cynulliad, er enghraifft drwy roi gwybodaeth i chi a rhoi tystiolaeth, a'ch bod chi yn ein sgrwtineiddio ni, mae'n gwneud ichi orfod cael atebion clir. Nid ydym eisiau sefyll yn y fan hon a dweud, *'Well, my adviser will give you the answer'*. Rwyf eisiau bod yn gymwys ac yn gallu ateb y cwestiynau fy hun, er mwyn gwneud i bobl sylweddoli mor bwysig yw'r pwnc yma i fi.

Bethan Jenkins: I think, rather than saying negative things—and I understand why people say that it is stressful—that it is, ultimately, a privilege to be able to do this. It has made me grow as an Assembly Member, for example by presenting information to you, and giving evidence, and in having you scrutinise us, it forces you to have clear answers. We do not want to sit here and say, 'Well, my adviser will give you the answer'. I want to be competent and able to answer the questions for myself, to make people realise how important this subject is to me.

[203] Fodd bynnag, y pwynt mwyaf pwysig i mi yw nad yw hi lan i Lywodraeth Cymru ddweud, 'Gall unrhyw un gael syniadau, Bethan'—dyna mae'n ei ddweud wrthyf i—'a dod â nhw gerbron'. Wel, dyna'r union bwynt: ein bod ni yn cael syniadau. Rydym i gyd yn dod o gefndiroedd gwahanol a dylem gael yr hawl a'r parch wedyn i ddatblygu drwy'r broses, yn hytrach na bod Llywodraeth Cymru bach yn sinigaidd ac yn dweud 'Wel, gall unrhyw un wneud hyn, Bethan'. Wir? Na, y ffordd ymlaen i ni fel Cynulliad, ac i Gymru, yw sicrhau bod syniadau o'r tu allan yn dod y tu fewn, a'n bod ni yn cael y cyfle i ddeddfu, ac nad dim ond y Llywodraeth sy'n cael y ffrainc o ddeddfu.

However, the most important point for me is that it is not up to the Welsh Government to say, 'Anyone can have ideas, Bethan'—that is what it says to me—'and bring them forward'. Well, that is the exact point: that we have ideas. We all come from different backgrounds and we should have the right and then the respect to develop throughout the process, rather than the Welsh Government being slightly cynical and saying, 'Well, anyone can do this, Bethan'. Really? No, the way forward for us as an Assembly, and for Wales, is to ensure that ideas from the outside do come inside, and that we have the opportunity to legislate, and that it is not only the Welsh Government that gets the privilege of legislating.

[204] **Alun Davies:** Nid wy'n anghytuno â chi. Mae'n ddiddorol beth ddywedwyd gennych am syniadau yn dod o'r tu fas. Un o'r trafodaethau a gawsom gyda'r Llywydd o'r blaen oedd am y berthynas rhwng y Cynulliad, Aelodau'r Cynulliad a bywyd sifil yng Nghymru. Liciwn i ofyn i chi, gan fod y tri ohonoch wedi dweud eich bod wedi cael

Alun Davies: I would not disagree with you. It is interesting what you said about ideas coming from outside. One of the discussions that we had with the Presiding Officer earlier was on the relationship between the Assembly, Assembly Members and civic society in Wales. I would like to ask you, as all three of you have said that you were led

eich arwain gan brofiad, profiad proffesiynol, neu eich gwaith gydag etholwyr, a ydych wedi derbyn neu yn gallu trafod y math o gefnogaeth rydych wedi ei chael gan fudiadau neu sefydliadau allanol?

[205] **Bethan Jenkins:** Gwneuthum ymgynghoriad cyn iddo gyrraedd y pwynt lle roedd hynny yn gorfod digwydd. Felly, euthum allan gyda'r tîm *external relations* yn y fan hon a oedd wedi siarad gyda phobl ifanc yn y sioeau, a gwnaethom SurveyMonkey ar-lein a siarad gyda phobl yn y digwyddiadau sy'n digwydd bob dydd yn y fan hon. Roedd hynny wedyn yn helpu achos roedd hynny'n gallu bod yn sail i graidd y syniad.

[206] Hefyd, mae ABCUL wedi bod yn eithaf cryf gyda fi o ran yr undebau credyd; mae mudiadau tai wedi bod yn gryf iawn a hefyd mae Martin Lewis o MoneySavingExpert.com wedi rhoi lot o wybodaeth i ni. Fel roedd Mick yn dweud yn gynharach, rydym wedi gorfod mynd mas i ffeindio gwybodaeth a ffeithiau er mwyn gwneud ein gwaith yn fwy swmpus. Rwy'n credu bod yn rhaid inni wastad trafod gyda'r bobl sy'n ein hethol ac yr ydym yn eu cynrychioli er mwyn sicrhau bod y ddeddfwriaeth rydym yn ei gwneud yn rhywbeth y maen nhw'n gallu uniaethu â hi. Dyna pam rwyf wedi ceisio siarad â phobl ifanc ac wedi gwneud y fideo hwn ar ddydd Mercher, achos maen nhw wedi dweud, 'Ie, mae angen mwy o addysg ariannol'. Nhw yw'r bobl sy'n mynd i elwa o hynny yn y pen draw.

[207] **Peter Black:** I had a lot of support from Consumer Focus Wales, which did its own research project on that. It facilitated fora with various interest groups and helped to pave the way for the legislation by conducting its own discussions with the Minister and with other Assembly Members. So, that research was the basis of the Bill. I took a lot of ideas from what it put forward and from that research. That was a great help to me.

[208] **Mick Antoniw:** The main support I had, as I outlined earlier, was identifying very early on what I wanted to do and how difficult it was going to be and then persuading other bodies. I think, in all of the Member-proposed legislation that I have seen, it is almost essential to have at least someone there in the background who is giving you some sort of assistance. Otherwise, it is a very lonely and tortuous path. There were particular legal complications and, quite frankly, I had to say to bodies that were keen to have this type of legislation—mainly the trade unions—'Well, you've got to give some assistance in clearing the decks and understanding what the challenges and difficulties are going to be'. Without that, I would still have proceeded, but I suspect that I would have made a lot more mistakes along the way, particularly in the area of competence.

by experience, your professional experience, or your work with constituents, whether you have accepted or can you discuss the type of support that you have had from organisations or institutions outside the Assembly?

Bethan Jenkins: I held a consultation before it reached the point where that was a requirement. So, I went out with the external relations team here and spoke with young people in the shows, I did a SurveyMonkey online and spoke with people at the events that happen every day in this place. That was then a help, because that could be a basis to the core of the idea.

Also, ABCUL has been quite strong in putting forward its views in terms of the credit unions; the housing associations have been very strong and Martin Lewis of MoneySavingExpert.com has given us a great deal of information. As Mike said earlier, we have had to go out to find the information and the facts in order to make our work more substantial. I think that we should always talk to the people who elect us and those we represent in order to ensure that the legislation that we put forward is something that they can identify with. That is why I have tried to speak to young people and why I put this video together on Wednesday, because they say, 'Yes, we need more financial education'. They are the ones who are going to benefit from that, ultimately.

[209] **William Powell:** Clearly, you did not enjoy the support of the Government's extensive communications team to promote the work of your Bill and some of you, possibly, have encountered positive resistance in some areas. I wonder whether you could give us a flavour of your experience of the Welsh media—both print and broadcast media—in terms of engaging with your legislation and how helpful that was to bringing things forward.

[210] **Mick Antoniw:** Certainly, in respect of my Bill, it was something that the media were very receptive to, because there has been a lot of—. It depends on the legislation, but asbestos is something that has a lot of sympathy. So, the engagement with support groups, medical groups, cancer groups and so on, was very easy and there was a lot of media interest. That was important in raising the profile to get people to understand what the issue was about and to winning support.

[211] However, it is also important that, as part of the legislative process of the Assembly, the public is aware as well. So, it is not just about the legislation, it is also about us saying to the people of Wales that this is what we are doing, this is what is happening, these are the efforts that have been made and showing how the Assembly is actually working. So, that was very important. But, it very much depends on what the nature of the legislation is.

[212] **Peter Black:** I had quite a bit of interest from the media and quite a bit of assistance from the Commission's own media team in terms of promoting that. It helped that, when I won the ballot, we carried out an extensive survey of as many park home owners around Wales as we could, and we had quite a lot of responses that people said they were prepared to speak about on the record. So, when the media came to us looking for particular case studies, we were able to refer them to individuals, which meant that they were able to take a different angle on it in terms of looking at particular experiences of the people and how they had suffered because of the inadequate legislation that was already in place. That helped to whet the media's appetite in terms of what they wanted to do with that. So, it was not just a question of me talking to the media about the process, it was them actually going out and seeing for themselves what was going on and that then being fed back into the process in terms of Assembly Members' awareness of the issue as well.

[213] **Bethan Jenkins:** Rwy'n credu mai'r sialens fwyaf yw cadw momentwm, oherwydd mae'n broses eithaf hir. Rwyf wedi cael sylw yn y wasg, er enghraifft, ond roedd hynny oherwydd roeddwn ni wedi gwneud ymchwil fy hun, trwy gais Deddf rhyddid gwybodaeth, ac edrych ar yr hyn roedd ysgolion dros Gymru yn ei wneud o ran addysg ariannol. Roedd rhai ysgolion yn gwneud lot fawr a rhai yn gwneud dim byd. Roedd y wasg wedyn yn gallu edrych ar hynny, fel stori o gwmpas deddfwriaeth. Mae'n rhaid inni fod yn onest, nid yw deddfwriaeth yn ei hun yn *sexy* iawn, felly mae'n rhaid inni greu rhyw fath o gyffro newydd.

Bethan Jenkins: I think that the greatest challenge is maintaining the momentum, because it is quite a long process. I have had attention in the press, for example, but that was because I undertook my own research via a freedom of information Act request and I looked at what schools across Wales were doing in terms of financial education. Some schools were doing a great deal and some were doing nothing. The press could then look at that as a story around the legislation. We have to be honest, legislation in itself is not very sexy, so we have to create some kind of new excitement

16:00

[214] Hefyd, mae Community Housing Cymru wedi gwneud holiadur gyda'i denantiaid sy'n dangos bod dros 10 o'r
Also, Community Housing Cymru has undertaken a questionnaire with its tenants and that shows that more than 10 of the

housing associations wedi ennill yn ôl rhwng £76,000 a £1 miliwn drwy helpu pobl i ddileu eu problemau ariannol. Felly, os oes straeon fel yna, mae'n helpu i roi ffocws, ond mae'n rhaid ichi fapio hyn mas, achos mae'n gallu bod yn anodd i wastad bod ar y ffôn i'r cyfryngau os nad oes elfen newydd i'r stori, fel petai.

housing associations have regained between £76,000 and £1 million by assisting people with overcoming their financial problems. So, if there are those kinds of stories coming forward, then it helps to give that focus, but you have to map this out, because it can be very difficult to always be on the phone with the media if there is no new element to the story, as it were.

[215] **William Powell:** I am very grateful for that. Thank you.

[216] **David Melding:** Simon—. I beg your pardon, Mick.

[217] **Mick Antoniw:** I just want to make a point on the role of the Wales Office in legislation, because—

[218] **David Melding:** We might get to that. Simon is next.

[219] **Simon Thomas:** Hoffwn ofyn i chi am rôl Swyddfa Cymru yn hyn o beth. [*Chwerthin.*] Mae'n amlwg bod y rôl yn amrywio gyda'r gwahanol Filiau. Mae eich Bil chi, Mick Antoniw, yn bendant yn ymwneud â chymhwysedd y Cynulliad. Gallwch ateb, felly, trwy ddweud beth yr oeddech yn mynd i'w ddweud 'nawr: beth oedd yr ymwneud â Swyddfa Cymru, a sut oeddech chi'n gallu gwneud hynny fel Aelod unigol, gan nad oes gennych chi le fel aelod o'r Llywodraeth, fel petai?

Simon Thomas: I would like to ask you about the role of the Wales Office in this regard. [*Laughter.*] It is clear that the role varies from Bill to Bill. Your Bill, Mick Antoniw, certainly relates to the competence of the Assembly. So, you can now answer by saying what you were just about to say: what was your engagement with the Wales Office, and how could you actually do that as an individual Member, as you do not have a position as a member of Government, as it were?

[220] **Mick Antoniw:** It is complex and it does depend on the nature of the legislation, to some extent, and how controversial that legislation is, in terms of whether it is potentially likely to be challenged by the UK Government or not. The first thing with this legislation is that, as we went through the stages, I was submitting the drafts to the Wales Office. I do not think I ever had any acknowledgement from it, so I did not know whether they had been received favourably, unfavourably, or at all. I think that the second aspect was—

[221] **Simon Thomas:** Were you advised to do that, or did you just do it off your own bat?

[222] **Mick Antoniw:** I think the Assembly advisers who were allocated to me said that it was a good idea to do that. I think we decided that, yes, we ought to at least notify it, because there were issues that it would have to approve along the way, and because the UK Government was going to be involved.

[223] The other aspect, of course, was trying to get clarity. I was fortunate also that a lot of negotiation took place between the UK Government and the Welsh Government, or the Wales Office and the UK Government, over the drafting of certain areas that potentially impacted on UK areas of either administration or responsibility. I do not think that I would have been in a position to conduct that myself, so I think that was an anomaly. If the Welsh Government had not taken that up, I do not know what mechanism exists that would have enabled me to actually approach and carry out that negotiation with the Wales Office or the UK Government. Without that support, I suspect that I might have fallen at that particular stage.

[224] I think the other aspect to it, of course, is that you had the role of the Wales Office, and then the Wales Office engaging with other departments. In my case, it was on the administration of the social security and benefits side in order to recover medical costs, and then there was a block there. It is difficult to work out whether it was a deliberate block, whether it was a bureaucratic block or whatever, but all I knew, and I reported on this during the various stages, was that those were matters that the Welsh Government were pursuing, and that, effectively, that part of the legislation was now out of my hands. So, I think that that is the sort of lesson with this type of legislation, in terms of where it fits in within the process of completing the legislation.

[225] **Simon Thomas:** If Welsh Government had not, in effect, backed your Bill, do you think that you could have got it through?

[226] **Mick Antoniw:** I might have been able to, but it would have been a lot more difficult and there would have been things that would have probably meant that a UK Government challenge was more likely, as opposed to just the issue with the insurance industry. There would have been anomalies and perhaps conflicts that might have been difficult to resolve if I was doing it on my own. I have a lot of respect for the way that the Wales Office lawyers and the Welsh Government lawyers were able to reach compromises or sensible drafting solutions. However, within the Member-proposed legislation process that we have here, there is no mechanism to actually allow me to do that. So, without Welsh Government support, I could have pressed ahead with the legislation, but there would have been many issues raised that would have either meant that the legislation took twice as long to achieve or that it was prevented from actually going forward at all.

[227] **Peter Black:** My experience was a bit more straightforward, because I was working within an entirely devolved area. However, I was still advised to write to the Secretary of State for Wales, which I did, giving him a copy of the Bill and asking whether he had any comments on it. I think that we had to chase that up and, in the end, I got a response only after I asked Jenny Randerson to chase it up—so, in a sense, going to a Wales Office Minister to ask for that. However, I do not think that there was any particular problem at the Wales Office as a result of that, and that was fairly straightforward.

[228] **Simon Thomas:** Bethan, a oes **Simon Thomas:** Bethan, are there any—
unrhyw—

[229] **Bethan Jenkins:** Na, dim byd. **Bethan Jenkins:** No, nothing, really. I
Roeddwn i eisiau gwneud stwff ar *loan* wanted to do stuff on loan sharks and betting
sharks a siopau betio, ond ar ôl cael cyngor shops, but having received advice from
gan Daniel Greenberg a oedd yn dweud na Daniel Greenberg, who said that they could
fyddent yn gallu cael eu rhoi yn y Bil, roedd not be put into the Bill, those issues just were
pethau felly jest ddim yno o'r cychwyn, not there from the very beginning.
wedyn.

[230] **Simon Thomas:** May I return to you, Mick Antoniw, because your Bill has ended up in the Supreme Court? In fact, we passed your Bill a year ago, and it is still not law. It is still a Bill, not an Act. Did you have any control at all over the decision to refer the Bill to the Supreme Court, because it was not a UK Government decision, it was actually Welsh Government advisers.

[231] **Mick Antoniw:** It comes under the jurisdiction, really, of the Counsel General, but I had discussions with the Counsel General and, as a result of those discussions, I was in agreement—in fact, it was partly suggested by me that it was better to have these issues resolved. We knew that they were going to arise, so it made sense to do that, rather than get Royal Assent to the legislation and then have it challenged at a later stage in a disruptive way.

So, in many ways, the discussion and co-operation with the Counsel General and, effectively, thereby, the Welsh Government, worked very well. I do not know what would have happened if there had been a disagreement between us. Ultimately, it is the Counsel General's jurisdiction and decision whether or not to refer the matter.

[232] **Simon Thomas:** So, you did not feel that it had been taken out of your hands, as it were, and that you had no control over things.

[233] **Mick Antoniw:** No, I did not. I felt that there was a lot of co-operation and discussion of the pros and cons and the arguments for and against. To be honest, we were anticipating that the issue was going to arise. Well, we knew the issue was going to arise and we knew that it was going to end up in the Supreme Court, either as the result of a UK Government challenge or as the result of a challenge by the insurance industry. The only questions were on the timing and the manner in which it happened, and we basically decided that it was better to face it, to get it there and to get the arguments out in front of the Supreme Court now.

[234] **Simon Thomas:** By doing that, there are costs incurred. Is it clear that the Welsh Government takes on board the costs that will arise from that, therefore? It started as a Member-proposed Bill or a backbench Bill, but it has ended up, in effect, as a Government Bill, has it not, by doing that process?

[235] **Mick Antoniw:** Yes. I would hope that cost is not a significant—. In fact, it has been difficult; as you know, there have been questions to the Counsel General on the cost and so on. I would hope that, on a matter of principle, the cost would not be the factor to determine whether legislation is not referred and that it is decided on the legal issues. As the Counsel General has reported previously, a lot of the costs are in-house costs already borne by the Welsh Government by virtue of the fact that the Counsel General works for the Welsh Government, but, of course, there are UK costs as well. There is not a system whereby the losing party pays, but, obviously, there are costs for the UK Government.

[236] There are also costs in the fact that we are now quite a while on since the legislation was passed here, and there is an issue in terms of how long the Supreme Court takes, because if it is a constitutional court, you want constitutional matters to be resolved quickly. I think that there is an issue there as to the protocol and how long these things take. There may be good legal arguments why, but I just do not know what they are and cannot conceive what they might be other than pressure of work or inability to reach agreement.

[237] **Simon Thomas:** Since the purpose of the Bill was to recover costs for the Welsh Government and the public purse, then, there we are. To move on to another aspect of the process, which is the scrutiny by subject committee, I just wondered if all three of you could reflect on how your Bills were scrutinised by committees—the experience from a personal point of view, but also the experience from the point of view of influencing how the Bill developed. Perhaps Bethan could answer first, as hers is up next for consideration in this way.

[238] **Bethan Jenkins:** I thought that, obviously, the scrutiny was effective, because I think that AMs get a kick out of trying to scrutinise us really hard, because we have a Bill going through—no, I am joking. It was really good, but I would say—obviously, I do not want to ruin my chances of it going through—that I would have liked to have seen some more people who would benefit from what I am trying to do coming in, either young people or—. Sometimes—it is not AMs' fault—we get the same type of people coming in, and I think there was more weight given to those who gave oral evidence than written evidence in the committee report, because I think that was the most relevant in your mind at the time. I would have liked, potentially, a few more sessions, but I know—for the record—that it is about the time that you can give as committees to scrutinising Member-proposed Bills, but, I think, a

few more sessions would have, perhaps, widened the debate a bit more. However, I think that what was done was in-depth and detailed.

[239] **Peter Black:** I think I appeared before three committees: the Finance Committee, the Communities, Equality and Local Government Committee, and this committee, and this committee was by far the worst, I have to say. [*Laughter.*]

[240] **David Melding:** It is the Chair. [*Laughter.*]

[241] **Peter Black:** It is a very daunting experience. I thought that the scrutiny of the Bill was very thorough, and I think that the Communities, Equality and Local Government Committee brought in a wide range of witnesses, both in terms of tenants themselves, or the park home owners themselves, as well as the various bodies that had an interest in that, which was quite useful. I think, though, that you might want to ask the subject committee what its experience was of scrutinising my Bill, because, effectively, Stage 2 of the Bill completely rewrote the Bill that had been scrutinised at Stage 1, which arose partly from its recommendations. So, in a sense, the Bill was scrutinised very thoroughly, but the Bill that was discussed at Stage 3 was almost an entirely different Bill, albeit one that still had the basic elements of the first Bill, but it had effectively consolidated UK legislation in a more comprehensive way, and I think it was a better Bill for that.

[242] **David Melding:** We touched upon that issue with the Presiding Officer, did we not, about the fact that a return to committee may occasionally be appropriate?

[243] **Simon Thomas:** Once the Bill had gone to Stage 2—and, as you said, there were significant amendments; in fact, I think that it was before this committee that some of those significant amendments started to emerge—

[244] **Peter Black:** I think that we came back to this committee once it had been amended.

[245] **Simon Thomas:** Indeed, but there was no opportunity for the other stakeholders then to re-engage, was there?

[246] **Peter Black:** No, not really.

[247] **Simon Thomas:** That had already been done at Stage 1. So, the Bill did not really get—. It is a feature of our system that the Bill can be significantly amended but we do not then re-engage with people.

[248] **Peter Black:** In defence of the process that I went through, the essential elements of the Bill that I introduced were still there in the final Bill—all of the changes were there—and most of the changes were more about consolidating existing legislation and modernising it. There was a significant modernisation in terms of the definition of a family, for example, which arose from a point that Jocelyn Davies raised in committee. So, the scrutiny really did work quite well in terms of making the Bill more fit for purpose.

[249] **Mick Antoniw:** I thought that the scrutiny process, both on the CLAC level and also in the Health and Social Care Committee, was very, very effective. As I said, I have seen scrutiny take place in Westminster, and I have seen some excellent scrutiny and some absolutely rubbish scrutiny. The test of how good the scrutiny is is whether you can work out whether people are supporting your Bill or not, and I have to say that, all the way through, I could not quite work out whether there was going to be opposition, who was supporting it and who was not. That is absolutely right, because scrutiny has to be objective in order to ensure that the legislation is effective, irrespective of what you think about the merits of the legislation. So, I thought that was very good, and I thought the committees and the

background support they had in terms of understanding the issues were particularly good, because it was grasping complex medical understanding, but also some complex legal issues of another legal process. Again, it does raise the issue that there is an enormous amount of pressure on the individual, and that is why I paired with another Assembly Member in order to work collectively on it, and I felt that that was helpful because it shared part of the workload, but it also shared part of the process when you are giving evidence on legislation. You may miss an important point or a point where it is important to get something on the record.

[250] **Bethan Jenkins:** Yr unig broblem o ran bod yn hollol *objective*, yn fy marn i, yw gadael i bawb gael pleidlais. Bil o'r meinciau cefn yw, ac nid wyf yn hyderus bod pawb, er enghraifft, yn y Llywodraeth, neu ym mhlaidd y Llywodraeth, yn cael pleidlais rydd. Er enghraifft, os ydynt yn cael eu chwipio ar rhywbeth maent yn teimlo nad yw'n rywbeth pleidiol—. Nid wyf yn gweld fy Mil fel rhywbeth pleidiol; rwy'n gweithio gyda'r Torïaid a'r Democratiaid Rhyddfrydol i geisio gwneud y Bil yn well, ac rwyf wedi dweud hynny o'r cychwyn cyntaf. Rwy'n gallu bod yn wleidyddol iawn, fel y bydd pobl yn fy adnabod yn gwybod.

Bethan Jenkins: The only problem with its being totally objective, in my opinion, is whether everybody should have a vote. This is a backbench Bill, and I am not confident that everyone, for example, in the Government, or in the Government party, will have a free vote. For example, if it is a whipped vote on something that they feel is not a party-political issue—. I do not see my Bill as something that is party political; I am working with the Tories and the Liberal Democrats to try to make the Bill better, and I have said that from the very beginning. I can be very political, as people who know me will know.

16:15

[251] Felly, rwy'n trio bod yn rhywun sydd eisiau gwrandau ar syniadau, ond yr unig beth y byddwn i'n ddweud yw efallai bod hynny yn rhywbeth sydd yn broblem i'r system. Gan mai Cynulliad o dim ond 60 o Aelodau yr ydym, os yw'r Llywodraeth yn erbyn eich Bil, pa Aelod o'r Blaid Lafur sy'n mynd i bleidleisio yn erbyn y Llywodraeth wedyn?

Therefore, I am trying to be someone who listens to ideas, but the only thing that I would say is that perhaps that is something that is a problem in the system at present. As we are an Assembly of only 60 Members, if the Government is against your Bill, what Member of the Labour Party is going to vote against the Government?

[252] **Simon Thomas:** Roeddwn yn mynd i ofyn cwestiwn mewn perthynas â hynny, a dweud y gwir, i bob un ohonoch chi. A oedd rhyw deimlad gyda chi bod llaw gudd y Llywodraeth y tu ôl i'r trafodion yn y pwyllgor? Mae'n bwysig cofnodi fod pob un ohonoch wedi mynd drwy'r broses gyntaf; mae'r Cynulliad wedi rhoi'r hawl a'r rhyddid i chi gyflwyno Bil, ac mae ambell i Fil wedi cael eu lladd yn y Cynulliad pan fo'n amlwg nad yw'r Llywodraeth yn cefnogi ambell i wrthblaid, efallai, neu berson yn yr wrthblaid. Felly, rydych wedi mynd drwy hynny. Pa mor fuan ddaeth hi'n amlwg beth oedd safbwynt y Llywodraeth, a pha mor ddylanwadol ydych chi'n feddwl yn y broses oedd safbwynt y Llywodraeth?

Simon Thomas: I was going to ask a question in relation to that to each and every one of you. Was there some feeling that the dead hand of Government was on the discussions throughout the committee stages? It is important to note that each of you has gone through that first stage; the Assembly has given you the right or freedom to introduce a Bill, and some Bills have been killed off at the very early stages, because the Government has not supported an opposition party or a particular person in the opposition. So, you have gone through that. At what stage did it become clear what the Government's stance was, and how influential was that Government view in the whole process?

[253] **Peter Black:** May I just say that, from my point of view, the Government was very

supportive from the very beginning? So, I knew that I had the backing of the Minister. There were issues that were raised by various officials that I had to overcome, and they were very thorough in the way that they scrutinised the Bill. We managed to address those in terms of the re-write.

[254] From the point of view of where we are at, it seems to me that, whatever institution you are in—whether you are in the House of Commons, the Scottish Parliament or whatever—and you have a private Member’s Bill, it always depends on whether the Government is going to back it or not, because, at the end of the day, the Government will have the whip hand and it can throw your Bill out, and that is quite important. So, you have to understand that. So, in a sense, you have to win the support of the Government sometimes, and very rarely will you get backbenchers revolting—certainly, as Bethan said, in an Assembly of 60 Members.

[255] I would also make one other point in terms of the process. We may touch on financial scrutiny in a minute, but this is more about the Government’s control of the Member-proposed Bill. Whenever you produce a Bill, you have to have a financial resolution, and that financial resolution can only be moved by a Minister, a member of the Government. That, effectively, gives them a veto over your Bill. They can just not move the resolution and the whole thing just falls down without any debate or discussion. It seems to me that that also prevents proper scrutiny of the financial side of the Bill. I would argue that that there is no problem with the Member in charge of the Bill being able to introduce that financial resolution, because, at the end of the day, if the Government does not support it, it will not support it and it will vote it down, but at least you will have the debate in the Assembly on that. I would rather have that debate and have it voted down in the Assembly than the Minister not introduce the financial resolution, and, effectively, defeat the Bill by default.

[256] **Bethan Jenkins:** That is what is going to potentially happen to me. The Government has said in a meeting, ‘Well, if you don’t make these changes we will vote it down’ but based on information, as I have already said, that is not a true reflection of the explanatory memorandum. So, I think that that is quite undemocratic, because we need to be able to make sure that the Government cannot have that veto. So, you could have a debate, and then it would just not let it go forward on that one aspect. At this stage, it is about the principles, so I do feel quite passionately about that.

[257] However, from the get-go, to be honest, it was more enjoyable in that sense, because Labour Members, I think, felt more flexible to be able to vote for it when we were just discussing the bones of my Bill, so I could lobby individual Labour Assembly Members, and that is how I got it through—there were some Labour AMs who wanted to push it forward. I have said that the committee stage is effective, but perhaps the way that Labour Members questioned me differed from the opposition. The Government line again and again has been, ‘We don’t need legislation’, so their line in committee has been, ‘Why do you need legislation?’ So, I do feel that hand of Government there, but I would like to feel that Labour AMs have their own minds too and perhaps they will vote differently on Wednesday.

[258] **Alun Davies:** I do not know what territory we are straying into—. It is very difficult to—

[259] **Bethan Jenkins:** I am not lobbying you, Alun. [*Laughter.*]

[260] **Alun Davies:** The Government has a right to its view and the Government has a right to its veto; that is the tyranny of a numerical majority. It appears to me that, if a Government is engaging with backbench Members in good faith, then that is the limit to what a backbench Member of any party can expect from the Government. The Government will then reach its conclusion and say, ‘We will support this’ or ‘We won’t support this’ or ‘If you’re not

prepared to make these amendments, then we will not support it'. It is the right of any Government or any party to reach those conclusions, and thus is the nature of our democracy.

[261] **Bethan Jenkins:** I appreciate that, but the problem, Alun, was that, when I first put the Bill forward, I was constantly writing to the Minister for education to ask for meetings. I was sending him everything, and he said that he did not feel that it would be appropriate to meet. Then, suddenly, when things started to develop, I was having phone calls at the eleventh hour asking, 'Can we meet?' I was trying to show willing and trying to come to a middle ground, really. So, I think that it works both ways. Of course, we are in a different party; they have their own Government priorities, but I think that it would be nice for them to understand that they do not just have all the ideas, and that other people in this place do too.

[262] **Alun Davies:** I think that it is well aware of that.

[263] **David Melding:** Peter made similar remarks to the ones that you were suggesting there, anyway, Alun, about that fact that of course there is a Government in this process. You have to be aware of that. However, I think some interesting points have been drawn out there. Peter, you did mention financial scrutiny in relation to this particular mechanism, but, for the general financial scrutiny, you do not appear before the Finance Committee. Is that right?

[264] **Peter Black:** I cannot remember, actually.

[265] **David Melding:** I think—. I am just wondering how the financial—

[266] **Peter Black:** I think that I did appear before the Finance Committee.

[267] **David Melding:** Okay. I beg your pardon.

[268] **Peter Black:** I just want to say that the regulatory impact assessment, which was drawn up by the Research Service, was absolutely outstandingly good and better at that time than those for most Government Bills. I quite enjoyed making that point in many committees that I went in front of.

[269] **David Melding:** What about the financial information, Bethan and Mick? How did you find that? In the far distant past I have been involved, when I was—. I cannot remember what they were called; they were legislative competence Orders, then, I think. However, the financial bit, that is, trying to come up with some sort of reasonable cost assessment, was difficult, and then to get scrutinised on that. I would be interested in your views on that. You have touched upon it earlier.

[270] **Mick Antoniw:** On the financial element in mine, the first thing was that the asbestos Bill was legislation that was going to bring money in. So, that is the first hurdle overcome, as far as Government is concerned—'Is it going to cost us anything?' The second thing is, 'What is it going to cost to administer and is that going to be proportionate to what you are going to call in?' So, in my case, it was a question of trying to work out the proportionate costings of it. In that respect, the Government officials were extremely helpful in their negotiations with the UK Government, which I had no right to do and could not have done, to actually work out how it would be administered and using the Compensation Recovery Unit, which is a UK set-up body, to achieve it. So, the costings were carried out very effectively. It was a lot of work, but the comment that I would make is that I could not and had no right to actually engage in that process.

[271] **David Melding:** The scrutiny was in the subject committee, was it, on the financial issues?

[272] **Mick Antoniw:** Yes. What then happened was that there were papers prepared, which actually evaluated—as part of the explanatory memorandum, I think—four different options in terms of costings as to different ways of doing it. One was that the Welsh Government does it completely itself and what will that cost, another was what the best cost was in terms of ultimately using the UK system, and then there were two interims. The key issue there was what was proportionate. However, they were all very effectively—. I think that it was in the nature of that particular legislation that it was possible to do that. I can imagine that for other bits of legislation it might not be as systematically easy to do it.

[273] **David Melding:** Bethan, I know that you are going through the process, so perhaps you do not want to give too much away about how you feel about the robustness of your financial information and the quality of scrutiny that it will be subjected to.

[274] **Bethan Jenkins:** I think that it was just really hard, because, obviously, I did not get much information from the Welsh Government. So, it is only now, actually, that we are starting to get an idea of how much the Government is putting into the literacy and numeracy framework. However, we do not actually know whether ITT provision is solely for LNF or whether it is for broader aspects of the curriculum, so it is very hard then to dig down and to say, ‘This is how much it would cost’. So, as I said earlier, we did go to a local authority and it gave us a breakdown of how much it would cost when the LNF was not in place. However, I would have liked to have had more engagement earlier on, because it would then have been more robust for the AMs to scrutinise as well—not that they did not scrutinise that. For example, on the financial inclusion strategy element of it, ADEW came in and said, ‘Well, actually, we don’t think that it will be that expensive to do’. My argument, all along, has been that the benefit of the savings being made to the local population would outweigh the cost—which, I believe, is small—to the Welsh Government and to those local authorities. So, it is trying to make those types of political arguments, really, along the line, as well.

[275] **Peter Black:** It has been kind of interesting, in terms of process, the way that the Commission staff were able to install Chinese walls, in terms of the process that we had.

[276] **David Melding:** We have one operating at the moment. [*Laughter.*]

[277] **Peter Black:** Some staff advise you on the finance and the legal side, and on the explanatory memorandum, and the other staff advise the committee. So, that was quite an interesting experience as well, as part of this process.

[278] **David Melding:** We have put an interesting range of questions to you, but, obviously, the report that we wish to make is to reflect on the fourth Assembly’s legislative process, so that the fifth Assembly can operate more effectively. Do you have any lessons that you think could valuably be applied in a slicker system, I suppose, for legislating, which we have not covered so far? Here is your chance to add anything that we have not covered so far.

[279] **Mick Antoniw:** I just think that one area that is worth considering is the mechanism for the actual selection of individual Member legislation—whether an out-of-the-hat ballot is the best mechanism, or something that might engage in some sort of ballot process, and I am thinking about the Westminster system. I make no judgment one way or the other, only that I do wonder whether the luck-of-the-draw mechanism, where you only have an opportunity for a small number of pieces of legislation, is the best way to do it, or not.

[280] **David Melding:** That is an interesting point.

[281] **Peter Black:** I would just underline my point about the financial resolution. I think that that is a change to Standing Orders that needs to happen if we are to have a process in which the Assembly determines on all aspects of it.

[282] **Bethan Jenkins:** I think that the issue, potentially, is for AMs outside of the Government, although it seemed to work okay for Peter. For example, my former colleague Dr Dai Lloyd's playing fields measure was given Royal Assent in December 2010, and yet it was only in spring this year that the Welsh Government went out to consultation on the regulations. So, I feel that, if we are going to be putting ideas forward and they are successful, then we need to be seeing progress of implementation from the Welsh Government, and I feel that that has not happened. When we are talking about—you know, Mick has an idea there, which I actually support, but we could be engaging, through the external relations team, and through the Petitions Committee, and looking at new ideas for pieces of legislation, because we do know that some AMs put the same pieces in. Perhaps we should encourage a debate that is more about the ideas for the ballot, because it might garner more interest from society as a whole, as to how it develops then.

[283] **David Melding:** I think that those are very interesting points, if I may say so, to finish on. I thank you all for giving of your time this afternoon. I think, again, that we have had a very productive session. It was remiss of me not to say that Darren Millar had to apologise for not being here—I think that there have been transport failures beyond his control. I know that he would have liked to have been at this session otherwise. So, thank you once again. I propose that we conduct the rest of the meeting, which will not be long, in private.

16:28

**Cynnig o dan Reol Sefydlog 17.42 i Benderfynu Gwahardd y Cyhoedd o'r
Cyfarfod**

**Motion under Standing Order 17.42 to Resolve to Exclude the Public from the
Meeting**

[284] **David Melding:** I move that

the committee resolves to exclude the public from the remainder of the meeting in accordance with Standing Order 17.42(vi).

[285] I do not see anyone objecting, so please clear the public gallery and switch off the broadcasting equipment.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 16:28.
The public part of the meeting ended at 16:28.*

